

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

ETHYPHARM S.A. FRANCE AND
ETHYPHARM S.A. SPAIN,

Plaintiffs,

v.

BENTLEY PHARMACEUTICALS, INC.,

Defendant.

Civil Action No. 04-1300-SLR

JOINT APPENDIX OF DEPOSITION TRANSCRIPTS

VOLUME V
(PAGES A-1012 – A-1230)

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Dated: August 25, 2006

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF DELAWARE

3 - - - - -

4 ETHYPHARM S.A. FRANCE and :

5 ETHYPHARM S.A. SPAIN, :

6 Plaintiffs, :

7 VS. : CASE NO.

8 BENTLEY PHARMACEUTICALS, : 04-13000-SLR

9 INC., :

10 Defendant. :

11 - - - - -

12

13 VIDEOTAPED DEPOSITION OF JAMES R. MURPHY,
14 a witness called by and on behalf of the
15 Plaintiffs, taken pursuant to the applicable
16 provisions of the Federal Rules of Civil
17 Procedure, before Sandra L. Bray, Registered
18 Diplomate Reporter, CSR Number 103593, and
19 Notary Public in and for Commonwealth of
20 Massachusetts, at the offices of Edwards Angell
21 Palmer & Dodge LLP, 111 Huntington Avenue,
22 Boston, Massachusetts, on Wednesday, July 19,
23 2006, commencing at 9:25 a.m.

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| | |
|--|--|
| <p>1 APPEARANCES: Page 2</p> <p>2 Representing the Plaintiffs:</p> <p>3 BAACH ROBINSON & LEWIS PLLC</p> <p>4 1201 F Street, NW</p> <p>5 Suite 500</p> <p>6 Washington, D.C. 20004</p> <p>7 BY: JONATHAN D. FINE, ESQUIRE</p> <p>8</p> <p>9 Representing the Defendant:</p> <p>10 EDWARDS ANGELL PALMER & DODGE LLP</p> <p>11 111 Huntington Avenue</p> <p>12 Boston, Massachusetts 02199</p> <p>13 BY: CRAIG E. STEWART, ESQUIRE</p> <p>14</p> <p>15 Representing Laboratorios Belmac S.A.:</p> <p>16 IBERFORO</p> <p>17 28014 Madrid-Cl</p> <p>18 Marques de Cubas, 6</p> <p>19 Madrid, Spain</p> <p>20 BY: REBECA CORRAL GREGORIO, ESQUIRE</p> <p>21 RAFAEL GARCIA-PALENCIA, ESQUIRE</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 Kristin Zarnetske, Videographer</p> | <p>1 EXHIBITS, Continued Page 4</p> <p>2 NO. DESCRIPTION PAGE NO.</p> <p>3 11 Fax to Mr. De Basilio from Mr. Murphy, dated 11-19-95 89</p> <p>4 12 Letter of Intent 97</p> <p>5 13 Draft of Manufacturing Agreement 107</p> <p>6 14 3-28-95 Diary Entry 109</p> <p>7 15 Fax to Mr. De Basilio from Mr. Murphy, dated 4-4-95 110</p> <p>8 16 4-18-95 Diary Entry 112</p> <p>9 17 5-2-95 Diary Entry 114</p> <p>10 18 Fax to Mr. De Basilio from Mr. Murphy, dated 6-26-95 115</p> <p>11 19 Fax to Mr. DeBregesas from Mr. Murphy, dated 7-13-95 116</p> <p>12 20 Bentley Pharmaceuticals Board of Directors 10-8-96 Meeting Minutes 122</p> <p>13 21 Fax to Mr. Dubois, et al. from Mr. Murphy, dated 1-21-97, and Translation 125</p> <p>14 22 Fax to Mr. DeBregesas from Mr. Murphy, dated 1-28-97 130</p> <p>15 23 2-5-97 Diary Entry 140</p> <p>16 24 Letter to Mr. Murphy from Mr. Dubois, dated 2-13-97 144</p> <p>17 25 8-28-97 Diary Entry 151</p> <p>18 26 Fax to Ms. Vaquero from Ms. Laura, dated 3-31-98 154</p> |
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|--|---|----------|--------|---|
| NO. | DESCRIPTION | PAGE NO. | | |
| 41 | Fax to Mr. Murphy from Mr. Herrera, dated 6-15-01 | 216 | 1 | S.A. Spain, and with me is Jonathan Fine. |
| 42 | 7-13-01 Diary Entry | 219 | 2 | MR. STEWART: Craig Stewart on behalf |
| 43 | Diary Entry | 223 | 3 | of Bentley Pharmaceuticals, INC. Also present |
| 44 | Fax to Mr. Murphy from Ms. Joannesse, dated 8-10-01 | 228 | 4 | is Rafael Garcia-Palencia and Rebeca Corral of |
| 45 | Bentley Pharmaceuticals Board of Directors 8-30-01 Meeting Minutes | 230 | 5 | the law firm of IberForo, counsel for |
| 46 | Fax to Mr. Murphy from Ms. Joannesse, dated 9-17-01 | 233 | 6 | Laboratorios Belmac S.A. |
| 47 | Copy of E-mail to Mr. Price, et al. from Mr. Simmons, dated 10-23-01, and Attachment | 234 | 7 | THE VIDEOGRAPHER: Thank you. Will |
| 48 | Press Release, dated 11-14-01 | 239 | 8 | the court reporter please swear in the witness? |
| 49 | Confidentiality Agreement | 245 | 9 | JAMES R. MURPHY, having duly sworn or |
| 50 | Copy of E-mail to Mr. Murphy, et al. from Mr. Fitzgibbons, dated 11-30-01, and Attachment | 247 | 10 | affirmed that his testimony would be the truth, |
| 51 | Diary Entry | 250 | 11 | the whole truth, and nothing but the truth, |
| 52 | Contrato de Transferencia de Tecnologia y Cesion de Know How and Translation | 252 | 12 | testified as follows: |
| 53 | Copy of E-mail to Mr. Murphy from Ms. Sanchez, dated 1-3-02 | 260 | 13 | *** |
| 54 | Copy of E-mail to Mr. Bolling, et al. from Mr. Fitzgibbons, dated 1-22-02, and Attachment | 262 | 14 | EXAMINATION BY MR. BOSTWICK: |
| | | | 15 | Q. Mr. Murphy, could you give us your full name for |
| | | | 16 | the record, please? |
| | | | 17 | A. James R. Murphy |
| | | | 18 | Q. That's M U R P H Y? |
| | | | 19 | A. Correct. |
| | | | 20 | Q. You are employed by Bentley Pharmaceuticals, Inc.? |
| | | | 21 | A. Correct. |
| | | | 22 | Q. What is your current position there? |
| | | | 23 | A. Chairman and CEO. |
| PROCEEDINGS (The New Hampshire driver's license number as identification of the deponent was noted for the record.) | | | Page 7 | Page 9 |
| 5 | THE VIDEOGRAPHER: This is Tape Number | | 1 | Q. And that's a publicly traded company? |
| 6 | 1 of the videotaped deposition of Mr. James R. | | 2 | A. Yes, it is. |
| 7 | Murphy, taken by Plaintiffs in the matter of | | 3 | Q. Have you had your deposition taken before? |
| 8 | Ethypharm S.A. France and Ethypharm S.A. Spain, | | 4 | A. Never. |
| 9 | Plaintiffs, versus Bentley Pharmaceuticals, Inc. | | 5 | Q. The process is a relatively straightforward one |
| 10 | Defendants, in the United States District Court, | | 6 | where I'll ask you questions and you are |
| 11 | District of Delaware, Case Number 04-13000(SLR). | | 7 | required to answer. Correct? |
| 12 | This deposition is being held on July 19th, 2006 | | 8 | A. Okay. |
| 13 | at approximately 9:25 a.m. | | 9 | Q. And you need to answer in -- verbally because |
| 14 | My name is Kristin Zarnetske. I'm a | | 10 | the court reporter can't take down a nod of the |
| 15 | legal videographer representing Esquire | | 11 | head. All right? |
| 16 | Deposition Services. The court reporter, also | | 12 | A. Okay. |
| 17 | in association with Esquire, is Sandra Bray. | | 13 | Q. The parties have agreed in this case that once |
| 18 | This deposition is being held at the law firm of | | 14 | the deposition begins you're not permitted to |
| 19 | Edwards Angell Palmer & Dodge at 111 Huntington | | 15 | consult with your counsel about the substance of |
| 20 | Avenue, Boston, Massachusetts. | | 16 | the testimony. Do you understand that? |
| 21 | Will counsel present please introduce | | 17 | A. Yes. |
| 22 | themselves for the record? | | 18 | Q. And you can take a break at any time. The only |
| 23 | MR. BOSTWICK: Yes, Dwight Bostwick on | | 19 | exceptions to that is that we won't be breaking |
| 24 | behalf of Ethypharm S.A. France and Ethypharm | | 20 | in between a question and an answer. |

3 (Pages 6 to 9)

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| <p>1 that, just tell me immediately. All right?</p> <p>2 A. Sure.</p> <p>3 Q. Now, you've just been sworn in by the court</p> <p>4 reporter, correct?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. And that means that the testimony today is given</p> <p>7 under penalty of perjury, which is a criminal</p> <p>8 statute. Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. And this means that you can't testify falsely</p> <p>11 and can't leave out important material</p> <p>12 information from your answers. Do you</p> <p>13 understand that?</p> <p>14 A. Yes.</p> <p>15 Q. Now, given your official position in a publicly</p> <p>16 traded company, you may have other duties to</p> <p>17 shareholders to tell the truth and be forth-</p> <p>18 coming in the lawsuit. Do you understand that</p> <p>19 as well?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Now, I'm going to show you an exhibit that I'm</p> <p>22 going to mark as Exhibit 1.</p> <p>23 (Declaration of James R. Murphy was</p> <p>24 marked Exhibit Number 1 for</p> | <p>Page 10</p> <p>1 A. I believe, yes.</p> <p>2 Q. Now, Bentley also files public disclosures with</p> <p>3 the SEC; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And press releases to the public to give</p> <p>6 shareholder -- shareholders information about</p> <p>7 the company?</p> <p>8 A. Yes.</p> <p>9 Q. Is this sworn declaration consistent with the</p> <p>10 positions you've taken before the SEC and in the</p> <p>11 public?</p> <p>12 A. I believe they are.</p> <p>13 Q. Does Bentley have a compliance officer in charge</p> <p>14 of complying with Sarbanes-Oxley --</p> <p>15 A. Yes.</p> <p>16 Q. -- and other similar regulations?</p> <p>17 A. Yes, they do.</p> <p>18 Q. What's the name of that individual?</p> <p>19 A. That would be Bob Hebert.</p> <p>20 Q. How do you spell that last name?</p> <p>21 A. H E B E R T.</p> <p>22 Q. How long has he held that position?</p> <p>23 A. I believe he's been there about three years.</p> <p>24 Q. Has he been apprised of the facts and</p> |
| <p>1 identification.)</p> <p>2 Q. And I'll ask you if you recognize that document.</p> <p>3 A. Yes, I recognize it.</p> <p>4 Q. You recognize that document to be a declaration</p> <p>5 that you signed in this case?</p> <p>6 A. Yes.</p> <p>7 Q. And if you look at Paragraph 27 on Page 8, that</p> <p>8 also indicates that you signed this under</p> <p>9 penalty of perjury as well; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And the next page, Page 9, that was -- that's</p> <p>12 your signature there?</p> <p>13 A. Yes, it is.</p> <p>14 Q. Okay. And that was executed on the 3rd of</p> <p>15 November, 2004, correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Okay. Did you review that document carefully</p> <p>18 before you signed it?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Okay. And have you reviewed it in anticipation</p> <p>21 of your deposition here today?</p> <p>22 A. Yes, I have.</p> <p>23 Q. Okay. Are all of the statements in this</p> <p>24 document true and correct?</p> | <p>Page 11</p> <p>1 circumstances of this lawsuit?</p> <p>2 A. He is aware of the lawsuit. He does not know</p> <p>3 any of the details. He has not sat down and</p> <p>4 heard any of the details.</p> <p>5 Q. If you look at the first page of Exhibit 1 here</p> <p>6 and the title of that document, was that sworn</p> <p>7 declaration submitted in support of the motion</p> <p>8 to dismiss this lawsuit?</p> <p>9 A. I do not know.</p> <p>10 Q. Okay. Is that what it says here, "Declaration</p> <p>11 of James Murphy in Support of Defendant Bentley</p> <p>12 Pharmaceuticals' Motion to Dismiss"?</p> <p>13 A. That's what it says.</p> <p>14 Q. And you're aware this lawsuit seeks \$40 million</p> <p>15 in damages?</p> <p>16 A. Yes.</p> <p>17 Q. Is it fair to say that one of the main purposes</p> <p>18 for this declaration was to convince the court</p> <p>19 that Laboratorios Belmac is a separate and</p> <p>20 distinct operation from Bentley in the U.S.?</p> <p>21 MR. STEWART: Objection to the extent</p> <p>22 that it calls for -- that it calls for</p> <p>23 information that this witness has through</p> <p>24 discussions and conversations with counsel.</p> |

4 (Pages 10 to 13)

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| <p style="text-align: right;">Page 14</p> <p>1 A. I don't know what the intent of this was, if it 2 was only for that or was to present other facts 3 or accumulation of facts. I don't know.</p> <p>4 Q. Let's take a look at some of these statements in 5 this declaration. And before we do, in your 6 declaration, you have referred throughout to 7 Bentley Pharmaceuticals, Inc. simply as Bentley; 8 is that correct?</p> <p>9 A. Could you repeat that?</p> <p>10 Q. Well, let's look at the first paragraph. Okay? 11 And that reads, "I'm chairman, president, chief 12 executive officer, and director of Bentley 13 Pharmaceuticals, Inc." and then in parentheses, 14 it has a quote "Bentley." Do you see that?</p> <p>15 A. I see that.</p> <p>16 Q. My question is, throughout this affidavit or -- 17 this sworn declaration, you referred to 18 headquarters in the U.S. Bentley 19 Pharmaceuticals, Inc. as Bentley; is that 20 correct?</p> <p>21 A. That is correct.</p> <p>22 Q. I'm going to do the same thing in my questions 23 to you, all right, for consistency sake. Is 24 that fair?</p> | <p style="text-align: right;">Page 16</p> <p>1 Q. And you've also referred to Laboratorios Belmac 2 in this affidavit as just Belmac; is that 3 correct? I'll use the term "declaration."</p> <p>4 A. Where?</p> <p>5 Q. Paragraph 5, and it's on the next page, 6 Laboratorios Belmac, S.A., and then you refer to 7 it as just Belmac. Do you see that?</p> <p>8 A. Yes, I see that.</p> <p>9 Q. So I'll do the same for purposes of my 10 questioning. All right?</p> <p>11 A. Thank you.</p> <p>12 MR. STEWART: Just as a short point of 13 clarification, to my knowledge, there is -- the 14 predecessor company name is Belmac Corporation, 15 not Belmac Corporation U.S.A.</p> <p>16 MR. BOSTWICK: Okay. The predecessor 17 corporation of Bentley Pharmaceuticals, Inc.?</p> <p>18 MR. STEWART: In name, yes.</p> <p>19 Q. But generally when I'm referring to 20 headquarters, I'll say Bentley. Okay?</p> <p>21 A. Okay.</p> <p>22 Q. And generally when I'm referring to the 23 subsidiary in Spain, I'll say Belmac or 24 Laboratorios Belmac. Okay?</p> |
| <p style="text-align: right;">Page 15</p> <p>1 A. Sure.</p> <p>2 Q. And that's -- I just want to point out that 3 that's true even though at one point in time 4 Bentley Pharmaceuticals, Inc. was called Belmac 5 Corporation U.S.A.; is that right?</p> <p>6 A. It was.</p> <p>7 Q. So if you have any problems understanding the 8 question because of that, you just tell me right 9 away. All right?</p> <p>10 A. Yes, I will.</p> <p>11 MR. STEWART: Just for --</p> <p>12 A. And also, I might on occasion say "we" when I'm 13 referring to Laboratorios Belmac or to Bentley 14 because when I go on to Wall Street, I talk 15 about us on a consolidated basis. So I could 16 make that same error, and I'll try to correct 17 it.</p> <p>18 Q. As we're going through, we'll both try to be 19 mindful of that.</p> <p>20 A. Okay.</p> <p>21 Q. If there seems to be any misunderstanding 22 developing, let's try to clear it up 23 immediately. Okay?</p> <p>24 A. Yes.</p> | <p style="text-align: right;">Page 17</p> <p>1 A. Yes.</p> <p>2 Q. Let's look at Paragraph 8 of that declaration. 3 Now, the last sentence of that paragraph -- the 4 second sentence of that paragraph reads, "Belmac 5 hires its own employees and makes employment 6 decisions regarding these employees, including 7 salaries." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. The general manager of Laboratorios Belmac is an 10 employee of Laboratorios Belmac, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And is it your view that the general manager of 13 Laboratorios Belmac is the most important 14 employee of Laboratorios Belmac?</p> <p>15 A. Yes.</p> <p>16 Q. In 1994 and 1995, didn't you make the decision 17 to fire Perez de Ayala, the general manager of 18 Spain?</p> <p>19 A. Yes.</p> <p>20 Q. What was the date of that?</p> <p>21 A. I don't remember.</p> <p>22 Q. Okay.</p> <p>23 A. But it was in that time frame that you say.</p> <p>24 Q. And you were the president of Bentley at that</p> |

5 (Pages 14 to 17)

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| <p>1 time, correct?</p> <p>2 A. I was the president of Belmac Corporation, now</p> <p>3 Bentley.</p> <p>4 Q. Okay. And thanks for that clarification. In</p> <p>5 1995, you made the decision to hire Clemente</p> <p>6 Gonzalez as general manager of Laboratorios</p> <p>7 Belmac, correct?</p> <p>8 A. Not correct.</p> <p>9 Q. Okay. What is current?</p> <p>10 A. He was already an employee. He was an employee,</p> <p>11 and I don't know who hired him; and I just moved</p> <p>12 him into that position.</p> <p>13 Q. Okay. So you made the decision to move</p> <p>14 Mr. Gonzalez to the position of general manager</p> <p>15 of --</p> <p>16 A. Yes.</p> <p>17 Q. -- Laboratorios Belmac?</p> <p>18 A. Yes.</p> <p>19 Q. And at that time, you were chairman and CEO of</p> <p>20 Bentley?</p> <p>21 A. Yes, yes --</p> <p>22 Q. Which --</p> <p>23 A. No, I take that back. At that time, I think I</p> <p>24 was just president of Belmac Corporation.</p> | <p>Page 18</p> <p>1 president, he would come to me and ask me, and I</p> <p>2 would give him the authorization go ahead and do</p> <p>3 it because he had -- Clemente had operational</p> <p>4 control of the company. He consulted with me.</p> <p>5 I agreed and allowed him to do it.</p> <p>6 Q. Okay. You were chairman and CEO of Bentley</p> <p>7 Pharmaceuticals at the time?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And just to clarify, that's at the time</p> <p>10 Mr. Herrera became general manager of</p> <p>11 Laboratorios Belmac, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Is it true that you currently have the legal</p> <p>14 authority to fire Adolfo Herrera at any time?</p> <p>15 A. Yes.</p> <p>16 Q. Now, let me read the sentence I read to you</p> <p>17 again, in Paragraph 8: "Belmac hires its own</p> <p>18 employees and makes employment decisions</p> <p>19 regarding the employees, including salaries."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. The portion of that statement relating to</p> <p>23 salaries, isn't it true that the Bentley board</p> <p>24 of directors approves the salary of the general</p> |
| <p>1 Q. Which --</p> <p>2 A. I was elevated to the position of chairman and</p> <p>3 CEO I believe it was in '95 sometime, late '95,</p> <p>4 I'm not sure of the exact date.</p> <p>5 Q. Okay. And when you said Belmac Corporation just</p> <p>6 then, you meant the Belmac Corporation that then</p> <p>7 became Bentley, correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Headquarters in the U.S.A.?</p> <p>10 A. Correct.</p> <p>11 Q. In 1999, you made the decision to replace</p> <p>12 Clemente Gonzalez Azpelia with Adolfo Herrera,</p> <p>13 correct?</p> <p>14 A. No, that is not correct.</p> <p>15 Q. What is correct?</p> <p>16 A. Clemente Gonzalez felt that Adolfo was more</p> <p>17 qualified and asked for Adolfo to become general</p> <p>18 manager, and I looked at the situation and</p> <p>19 agreed with Clemente's decision and</p> <p>20 recommendation for such.</p> <p>21 Q. Okay. Did you hold the authority to make that</p> <p>22 decision?</p> <p>23 A. I was president of Laboratorios -- and still am</p> <p>24 of Laboratorios Belmac, and in my capacity as</p> | <p>Page 19</p> <p>1 manager at Laboratorios Belmac?</p> <p>2 A. Yes.</p> <p>3 Q. Let's look at Exhibit 2. We'll keep that</p> <p>4 Exhibit 1 to the side because we'll be referring</p> <p>5 back to it.</p> <p>6 (Bentley Pharmaceuticals Board of</p> <p>7 Directors November 13, 1997 Meeting</p> <p>8 Minutes were marked Exhibit Number 2 for</p> <p>9 identification.)</p> <p>10 Q. Okay. I'm going to show you this document and</p> <p>11 ask you, just by looking at the first page, if</p> <p>12 you recognize what that document is.</p> <p>13 A. I recognize what is minutes of the meeting of</p> <p>14 board of directors.</p> <p>15 Q. So these are Bentley board minutes that are</p> <p>16 produced by Bentley Pharmaceuticals in the</p> <p>17 ordinary course of its business?</p> <p>18 A. Yes.</p> <p>19 Q. And on the first page, it says this is a meeting</p> <p>20 held on November 13th, 1997. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And it says that you're present as a board</p> <p>23 member; is that correct?</p> <p>24 A. Yes.</p> |

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| <p style="text-align: right;">Page 22</p> <p>1 Q. And in 1997, you're attending that board meeting 2 as the chairman of the board and the CEO of the 3 company, correct? 4 A. Yes. 5 Q. When I say the company, I mean Bentley. 6 A. Bentley. 7 Q. Now, let me direct your attention to Page 2678. 8 And the first paragraph down, it says, "The 9 meeting was then recessed in order to 10 accommodate a meeting of the compensation 11 committee of the board." And that's the Bentley 12 board, correct? 13 A. Yes. 14 Q. "Upon the conclusion of the compensation 15 committee meeting, the board meeting was 16 reconvened. The compensation meeting presented 17 Mr. Murphy's proposal for Mr. Gonzalez's 18 compensation adjustment along with its 19 recommendation to the members of the board that 20 its proposal be approved." Do you see that? 21 A. Yes. 22 Q. And then you see how it was approved by the 23 Bentley board of directors that Clemente 24 Gonzalez would be given a 10 percent bonus and</p> | <p style="text-align: right;">Page 24</p> <p>1 Q. And I'll ask you if you recognize that to be 2 Bentley board of directors minutes from 3 July 29th, 1998. 4 A. Yes. 5 Q. And again, you were attending as the chairman 6 and CEO of Bentley, correct? 7 A. Yes. 8 Q. Let me turn your attention to Page 2619. And 9 midway down the page, do you see the indication 10 that Mr. Murphy then informed the members of the 11 board that the company had granted a total of 12 56,000 stock purchase options to various members 13 of the Spanish team? Do you see that? 14 A. Yes. 15 Q. And by the board, that means the Bentley board, 16 not the Belmac board, correct? 17 A. The Bentley board of directors. 18 Q. And do you see on these -- Page 2619 and 2620, 19 there's approximately fifteen employees who 20 receive stock options, both Bentley stock, 21 correct? 22 A. Yes. 23 Q. And that's a true statement that that's, in 24 fact, what occurred?</p> |
| <p style="text-align: right;">Page 23</p> <p>1 salary increase? 2 A. He would be given a salary increase of 3 10 percent and an equivalent -- a bonus 4 equivalent of that award in a prior year. 5 Q. I see. And thank you for that. That is a 6 clarification. So this is an increase of 7 10 percent plus a bonus; is that correct? 8 A. Yes, uh-huh. 9 Q. So it's true that the salary of the top employee 10 at Laboratorios Belmac is set by the Bentley 11 board, correct? 12 A. Yes, it is: The increases and bonuses are set 13 by the board. 14 Q. Now, let me show you -- isn't it true that the 15 Bentley board of directors also awards Bentley 16 stock options to Laboratorios Belmac employees? 17 A. Yes. 18 Q. Let me show you a third exhibit. 19 MR. BOSTWICK: That should be Number 20 3. 21 (Bentley Pharmaceuticals Board of 22 Directors July 29, 1998 Meeting Minutes 23 were marked Exhibit Number 3 for 24 identification.)</p> | <p style="text-align: right;">Page 25</p> <p>1 A. Yes. 2 MR. STEWART: I would just ask that 3 you offer to the witness the opportunity to 4 review the entirety of the document in the event 5 that he feels the need. I understand you 6 directed his attention to a particular portion. 7 I want that to be made clear. 8 Q. Look, there's a lot -- Mr. Murphy, there's a lot 9 in these board minutes. I believe this is the 10 only portion that discusses the salary increase, 11 but you're free -- if my questions don't make 12 sense to you based on what you're reading, 13 you're certainly free to look at it further. 14 Okay? Do you understand that? 15 A. Yes. 16 Q. But basically the point is that the Bentley 17 board, not the Laboratorios Belmac board, 18 authorized Bentley stock options for 19 approximately fifteen top Belmac employees; is 20 that correct? 21 A. Yes. 22 Q. And that's in 1998, correct? 23 A. Yes. 24 Q. Did that happen at other times?</p> |

7 (Pages 22 to 25)

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| <p>1 A. Yes, it has.</p> <p>2 Q. Okay. Approximately how many Laboratorios</p> <p>3 Belmac employees have been given stock options</p> <p>4 of Bentley stock?</p> <p>5 A. I don't know exactly.</p> <p>6 Q. Okay. It's more than these fifteen?</p> <p>7 A. It's approximately fifteen.</p> <p>8 Q. Who has the most from Laboratorios Belmac?</p> <p>9 MR. STEWART: At the present time?</p> <p>10 MR. BOSTWICK: At the present time,</p> <p>11 yes.</p> <p>12 MR. STEWART: At the present time in</p> <p>13 aggregate?</p> <p>14 MR. BOSTWICK: Yes.</p> <p>15 MR. STEWART: I'm sorry. When you say</p> <p>16 the most --</p> <p>17 MR. BOSTWICK: I'll rephrase the</p> <p>18 question.</p> <p>19 Q. Who within Laboratorios Belmac has received the</p> <p>20 most Bentley shares in the aggregate from</p> <p>21 Bentley Pharmaceuticals, Inc.?</p> <p>22 A. I'm not sure because Clemente Gonzalez was with</p> <p>23 us for a longer period of time. Adolfo --</p> <p>24 probably Adolfo.</p> | <p>Page 26</p> <p>1 Q. Okay. And didn't you think it was important to</p> <p>2 disclose to the court that Bentley's board of</p> <p>3 directors and its compensation committee, not</p> <p>4 Belmac, approves the general manager's salary</p> <p>5 for Laboratorios Belmac's general manager?</p> <p>6 A. The board approves the general manager's salary.</p> <p>7 Q. Okay. And didn't you think it was important to</p> <p>8 inform the court that Bentley's board of</p> <p>9 directors has given shares of stock to at least</p> <p>10 fifteen of Bentley's top employees?</p> <p>11 A. The shares of stock were given to the employees</p> <p>12 upon the recommendation of the general manager</p> <p>13 in each year. The general manager made the</p> <p>14 recommendation.</p> <p>15 Q. In other words, the general manager, like Adolfo</p> <p>16 Herrera, recommends that he receives a bonus?</p> <p>17 A. No. The general manager, as I said, is reviewed</p> <p>18 by the board of directors. The general manager</p> <p>19 makes recommendations for all the other</p> <p>20 employees.</p> <p>21 Q. Okay. And Bentley votes to approve or</p> <p>22 disapprove of that, correct?</p> <p>23 A. Correct.</p> <p>24 Q. My question to you is, don't you think this is</p> |
| <p>1 Q. Adolfo Herrera?</p> <p>2 A. Right.</p> <p>3 Q. So it would likely be one of the two last</p> <p>4 general managers, either Adolfo Herrera or</p> <p>5 Dr. Clemente Gonzalez?</p> <p>6 A. The largest portion has gone to the general</p> <p>7 manager.</p> <p>8 Q. Let me have you take a look at Paragraph 8 again</p> <p>9 of your declaration. It says -- that sentence I</p> <p>10 read you earlier says, "Belmac hires its own</p> <p>11 employees and makes employment decisions</p> <p>12 regarding these employees, including salaries."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Mr. Murphy, when you swore under penalty of</p> <p>16 perjury that Belmac hires its own employees and</p> <p>17 makes employment decisions regarding these</p> <p>18 employees, including salaries, didn't you think</p> <p>19 it was important to disclose to the court that</p> <p>20 you as the CEO and chairman of the board have</p> <p>21 hired or fired every single general manager of</p> <p>22 Laboratorios Belmac since 1994?</p> <p>23 A. That's not correct. I already explained that to</p> <p>24 you.</p> | <p>Page 27</p> <p>1 at best a very misleading statement, that Belmac</p> <p>2 hires its own employees and makes employment</p> <p>3 decisions regarding these employees, including</p> <p>4 salaries?</p> <p>5 A. No.</p> <p>6 MR. STEWART: Objection,</p> <p>7 argumentative. You may answer.</p> <p>8 A. No.</p> <p>9 Q. You do not think it's true?</p> <p>10 A. I do not think it's true.</p> <p>11 Q. Let's take a look at another of these sworn</p> <p>12 statements in the declaration. Why don't you</p> <p>13 look at Paragraph 7? And the second to last</p> <p>14 line reads, "Belmac elects its own board of</p> <p>15 directors." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. That's not really a true statement; is</p> <p>18 it?</p> <p>19 A. By way of the statutory rules of Spain, we</p> <p>20 followed that and --</p> <p>21 Q. Isn't it true -- I'm sorry.</p> <p>22 A. And we file.</p> <p>23 Q. I'm sorry?</p> <p>24 A. We make the elections and we file everything</p> |

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| <p>1 properly in Spain.</p> <p>2 Q. When you say "we," who do you mean?</p> <p>3 A. The board of Belmac.</p> <p>4 Q. Isn't it true that the members of the</p> <p>5 Laboratorios Belmac board are elected at a</p> <p>6 Bentley shareholder meeting?</p> <p>7 A. I believe that they are probably ratified at the</p> <p>8 meeting.</p> <p>9 Q. Bentley has been the sole shareholder of</p> <p>10 Laboratorios Belmac since 1993 or 1994, correct?</p> <p>11 A. I think it's been before that. I think it was</p> <p>12 1992.</p> <p>13 Q. Okay. And Bentley as the sole shareholder</p> <p>14 elects the Belmac board of directors; doesn't</p> <p>15 it?</p> <p>16 A. I don't recall.</p> <p>17 Q. In fact, Mr. Murphy, at these Bentley</p> <p>18 shareholder meetings where the board of</p> <p>19 directors of Belmac is chosen, you are the one</p> <p>20 who's personally designated to vote the shares</p> <p>21 of Bentley; isn't that true?</p> <p>22 A. I'm not sure.</p> <p>23 Q. Isn't it also true that Bentley's choice for the</p> <p>24 board of directors of Laboratorios Belmac has</p> | <p>Page 30</p> | <p>1 of perjury that Belmac elects its own board of</p> <p>2 directors, don't you think it's important to</p> <p>3 make it clear to the court that you as the</p> <p>4 chairman and CEO of Bentley vote 100 percent of</p> <p>5 the shares at the shareholders meeting to choose</p> <p>6 the Belmac board of directors?</p> <p>7 MR. STEWART: Objection,</p> <p>8 argumentative.</p> <p>9 A. I am Belmac's president -- Laboratories Belmac's</p> <p>10 president and a board member.</p> <p>11 Q. But that's not how you vote the shares to</p> <p>12 determine who becomes a Laboratorios Belmac</p> <p>13 board member; is it?</p> <p>14 MR. STEWART: Objection, asked and</p> <p>15 answered.</p> <p>16 A. I don't know.</p> <p>17 Q. Don't you think it's important to inform the</p> <p>18 court that Bentley has always elected a</p> <p>19 Laboratorios Belmac board that has a majority of</p> <p>20 Bentley officers and directors?</p> <p>21 MR. STEWART: Objection,</p> <p>22 argumentative.</p> <p>23 A. Can you ask me again?</p> <p>24 MR. BOSTWICK: Could you read back the</p> | <p>Page 32</p> |
| <p>1 always been to elect a majority of Bentley</p> <p>2 officers to the board of directors of</p> <p>3 Laboratorios Belmac?</p> <p>4 A. I don't know that for a fact.</p> <p>5 Q. In other words --</p> <p>6 A. I mean that is the way it is because there are</p> <p>7 two members from the U.S., but I don't know if</p> <p>8 that is necessarily a policy.</p> <p>9 Q. Okay. Isn't it true that it's always --</p> <p>10 Laboratorios Belmac in Spain has always had a</p> <p>11 majority of Bentley officers and directors on</p> <p>12 the Laboratorios Belmac board?</p> <p>13 A. I believe so.</p> <p>14 Q. And this means that Bentley has the authority to</p> <p>15 control the actions of Belmac; doesn't it?</p> <p>16 MR. STEWART: Objection.</p> <p>17 A. There is a majority of U.S. employees -- Bentley</p> <p>18 employees on the board.</p> <p>19 Q. I'm going to refer you back to this sentence in</p> <p>20 Paragraph 7 of your sworn declaration. It says,</p> <p>21 "Belmac elects its own board of directors."</p> <p>22 That's false; isn't it?</p> <p>23 A. No.</p> <p>24 Q. Okay. Mr. Murphy, when you swear under penalty</p> | <p>Page 31</p> | <p>1 question, please?</p> <p>2 (Reporter read back the last question.)</p> <p>3 A. No.</p> <p>4 Q. The current board today of Laboratorios Belmac,</p> <p>5 does that consist of four people; you,</p> <p>6 Mr. Price, Mr. Herrera, and Mr. or Ms. Esteve?</p> <p>7 Is that correct?</p> <p>8 A. No, I believe there are three.</p> <p>9 Q. Who are the three?</p> <p>10 A. It's Mike Price, myself, and Adolfo Herrera, I</p> <p>11 believe.</p> <p>12 Q. And you're the number one person at Bentley,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. And Mr. Price is the CFO of Bentley?</p> <p>16 A. Yes.</p> <p>17 Q. And that's, effectively, the number two person</p> <p>18 at Bentley?</p> <p>19 A. No.</p> <p>20 Q. Okay. Who would you consider to be the number</p> <p>21 two person at Bentley?</p> <p>22 A. The president.</p> <p>23 Q. Who is?</p> <p>24 A. John Sedor.</p> | <p>Page 33</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 Q. That's S E --</p> <p>2 A. D O R.</p> <p>3 Q. -- D O R? And at any rate, Mr. Price is a top</p> <p>4 official of Bentley, correct?</p> <p>5 A. He is an executive.</p> <p>6 Q. Of Bentley?</p> <p>7 A. Bentley.</p> <p>8 Q. All right. And Adolfo Herrera, is he also a</p> <p>9 vice-president of Bentley?</p> <p>10 A. Yes.</p> <p>11 Q. Was he a vice president of Bentley when you</p> <p>12 signed this affidavit in November of 2004? And</p> <p>13 I should say declaration, not affidavit.</p> <p>14 A. I don't know whether he was at that time or not.</p> <p>15 Q. Let me turn your attention to Paragraph 9 of the</p> <p>16 affidavit, this sworn declaration. You state,</p> <p>17 "Adolfo Herrera has significant autonomous</p> <p>18 authority over the operations of Belmac." Do</p> <p>19 you see that?</p> <p>20 A. Yes.</p> <p>21 Q. "And the extent of Mr. Herrera's authority is</p> <p>22 contained in the delegation of power from the</p> <p>23 Belmac board of directors." Do you see that?</p> <p>24 A. Yes.</p> | <p style="text-align: right;">Page 36</p> <p>1 February of 1995; is that correct?</p> <p>2 A. Approximately.</p> <p>3 Q. Isn't the consejero delegado unico the sole</p> <p>4 person with complete power over the company to</p> <p>5 delegate as he requests?</p> <p>6 A. I believe.</p> <p>7 Q. Okay. So the authority that Mr. Herrera is</p> <p>8 given is not given from the Belmac board of</p> <p>9 directors; it's given by you as the consejero</p> <p>10 delegado unico; isn't it?</p> <p>11 A. I never thought of the distinction of where</p> <p>12 that came from, whether as me as the chief</p> <p>13 executive of Laboratorios Belmac or whether from</p> <p>14 consejero delegado.</p> <p>15 Q. Just a moment. I want to show you a document</p> <p>16 that I don't have in front of me.</p> <p>17 MR. STEWART: Off the record just for</p> <p>18 a moment. A water break.</p> <p>19 MR. BOSTWICK: Fine.</p> <p>20 THE VIDEOGRAPHER: The time is 10 a.m.</p> <p>21 We're going off the record.</p> <p>22 (Recess)</p> <p>23 (2-page Document, Bates Nos.</p> <p>24 EP 002865 - EP002866, and Translation</p> |
| <p style="text-align: right;">Page 35</p> <p>1 Q. Isn't it true that the delegation of power</p> <p>2 doesn't come from the Belmac board of directors,</p> <p>3 but it comes from you as the consejero delegado</p> <p>4 unico?</p> <p>5 A. Yes. You understand that that means that I am a</p> <p>6 director.</p> <p>7 Q. Okay. What do you understand --</p> <p>8 MR. BOSTWICK: Let me spell this just</p> <p>9 so -- it's in Spanish.</p> <p>10 A. Consejero delegado.</p> <p>11 MR. BOSTWICK: But for the court</p> <p>12 reporter's benefit, let me make sure we have</p> <p>13 that correct. Consejero, I believe, would be</p> <p>14 C O N S E J E R O. Delegado would be</p> <p>15 D E L E G A D O, and unico would be U N I C O, I</p> <p>16 believe.</p> <p>17 Q. Okay. And why don't you tell me what you</p> <p>18 understand that term to mean?</p> <p>19 A. That is the highest position in a board member.</p> <p>20 Q. The highest position of the Spanish company and</p> <p>21 a board member?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And you have held this position of consejero</p> <p>24 delegado unico at Laboratorios Belmac since</p> | <p style="text-align: right;">Page 37</p> <p>1 was marked Exhibit Number 4 for</p> <p>2 identification.)</p> <p>3 THE VIDEOGRAPHER: The time is</p> <p>4 10:01 a.m. We're back on the record.</p> <p>5 Q. Okay. I'm going to show you what's been marked</p> <p>6 as Exhibit 4, and I'll represent that this is</p> <p>7 what was given to us by your counsel as being</p> <p>8 directly responsive to the legal document that</p> <p>9 conferred power on Mr. Herrera. Okay? And I</p> <p>10 realize it's in Spanish, which is difficult for</p> <p>11 both you and me, but we've translated just the</p> <p>12 first couple of paragraphs of it on the back</p> <p>13 there. Do you see that?</p> <p>14 MR. BOSTWICK: And, Craig, I'm sorry,</p> <p>15 you may have to look over his shoulder; we only</p> <p>16 have two of the translations. We just made a</p> <p>17 mistake in copying. I apologize for that.</p> <p>18 MR. STEWART: If I can have a moment</p> <p>19 to look at the translation.</p> <p>20 MR. BOSTWICK: Sure.</p> <p>21 MR. STEWART: First, I'll let the</p> <p>22 witness look at it.</p> <p>23 MR. BOSTWICK: Maybe you can both do</p> <p>24 it at the same time. It's short.</p> |

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| <p>1 Q. Really, I'm only concerned with the top two 2 paragraphs, not the third one for my question. 3 Okay? Let me ask you whether it's 4 your understanding that that says that 5 Mr. Murphy as the delegated counselor or the 6 consejero delegado unico is delegating the 7 limited powers to Mr. Herrera. 8 MR. STEWART: Objection to the extent 9 that this calls for a legal conclusion from this 10 witness with respect to the laws of Spain. 11 A. I hesitate to comment on this because when this 12 was being granted -- the powers were being 13 granted, there was an interpreter -- there was 14 an interpreter telling me this entire document. 15 You've got only one paragraph here. I don't 16 feel comfortable answering this. 17 Q. Well, you have held this position of consejero 18 delegado unico for over ten years, correct? 19 A. Yes. 20 Q. Okay. And isn't it true that this document 21 doesn't refer to the Belmac board of directors 22 delegating powers; it refers to you, Mr. Murphy, 23 as the consejero delegado unico delegating 24 powers; is that correct?</p> | <p>Page 38</p> <p>1 Q. Okay. Didn't you feel it was important to 2 disclose to the court that you have held the 3 position of consejero delegado unico for 4 approximately ten years? 5 MR. STEWART: Objection, argumentative. 6 A. No. 7 Q. And you didn't feel, I take it, that it was 8 important to describe those duties of consejero 9 delegado unico to the court? 10 MR. STEWART: Objection, argumentative. 11 A. No. 12 Q. Is it also -- strike that. Is it significant to 13 you that today you hold the sole power of 14 consejero delegado unico with someone other than 15 Mr. Herrera? 16 MR. STEWART: Objection, assumes facts 17 not in evidence. 18 A. I don't understand your question. 19 Q. Does Mr. Price hold this power with you 20 currently? 21 MR. STEWART: Objection. 22 A. Not that I know of.</p> |
| <p>1 A. I respond exactly as I have in the previous. I 2 had an interpreter that was guiding me through 3 sentence by sentence of this when these powers 4 were granted; and I don't have the advantage of 5 having the complete knowledge of what this 6 entire document says. You've only given me one 7 paragraph. 8 Q. Okay. Tell -- setting that document aside, 9 setting Exhibit 4 aside, you have provided in 10 Paragraph 11 of your sworn declaration a 11 rather -- I'm sorry. It's Paragraph 9 of your 12 declaration. You have provided a rather lengthy 13 description of Mr. Herrera's powers; is that 14 correct? 15 A. Yes. 16 MR. STEWART: Objection to the 17 characterization of lengthy. 18 Q. Didn't you feel it was important in your sworn 19 declaration to note that for over ten years you 20 alone have held the power to give or revoke the 21 general manager's authority? 22 MR. STEWART: Objection, 23 mischaracterization of testimony. 24 A. No.</p> | <p>Page 39</p> <p>1 Q. Okay. Let me have you turn to Paragraph 7 of 2 your sworn declaration. And the third to last 3 sentence in that, the last portion says, "Belmac 4 is not dependent on Bentley for funding." Do 5 you see that? 6 A. Yes. 7 Q. Now, let me also have you turn to Paragraph 21 8 of your declaration. And it says, "Belmac 9 developed its own omeprazole manufacturing 10 process in Spain without Bentley's involvement. 11 Belmac used its own funds to finance the 12 manufacture of omeprazole and the necessary 13 clinical trials of the omeprazole manufacturing 14 process that Belmac developed." Do you see 15 that? 16 A. Yes. 17 Q. Okay. Mr. Murphy, isn't it true that Bentley 18 set up a bank account in Spain to accept U.S. 19 dollars for the purpose of creating a line of 20 credit that Laboratorios Belmac could access for 21 funding? 22 A. No. 23 Q. Okay. Let me show you an exhibit. Tell me what 24 your understanding of that is.</p> |

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1 MR. STEWART: Of what?
 2 Q. When you say that's not the correct answer, what
 3 is the correct answer on that?
 4 A. The correct answer is that the board granted
 5 Mike Price the ability to open up a credit
 6 facility or an account it needed for expansion
 7 or anything like that. It did not happen.
 8 Q. Okay. No account was ever --
 9 A. Not that I know of.
 10 Q. -- opened? Let me show you this document.
 (Bentley Pharmaceuticals Board of
 Directors October 13, 2000 Meeting
 Minutes was marked Exhibit Number 5 for
 identification.)
 15 Q. I'll ask you if recognize Exhibit 5 as minutes
 16 of a Bentley board meeting on October 13th,
 17 2000.
 18 A. Yes.
 19 Q. And, again, you're in attendance as the chairman
 20 and CEO of Bentley?
 21 A. Yes.
 22 Q. On the second page of that, it says that,
 23 "Mr. Price asked the board to authorize the
 24 opening of a commercial bank account in Spain

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1 Laboratorios Belmac approximately 6 million
 2 euros?
 3 A. No, I don't think it was a loan.
 4 MR. STEWART: Time?
 5 Q. Isn't it -- over what time period did this take
 6 place?
 7 MR. STEWART: Well, not over what this
 8 takes place. The time period your question
 9 encompasses.
 10 MR. BOSTWICK: I'm asking him.
 11 When -- because we haven't received documents
 12 relating to this, Mr. Stewart, I'm having to ask
 13 him.
 14 Q. When did Bentley loan 6 million euros; which is
 15 approximately 6 to \$7 million U.S., when did
 16 they loan that to Laboratorios Belmac?
 17 A. Bentley did not -- from my recollection, Bentley
 18 did not loan money. There's management fees
 19 that we charge for our overhead expenses, and
 20 that came to approximately \$6 million.
 21 Q. Isn't it -- and over what period?
 22 A. I don't know what period of time that would be.
 23 Q. Isn't it true that in 2003 or 2004, Bentley
 24 forgave this loan in its entirety and took

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1 which would accept U.S. dollars, for the purpose
 2 of creating a line of credit that the Spanish
 3 subsidiary could access for working capital
 4 purposes, if necessary."
 5 A. Yes, that's what I've just answered before.
 6 Q. And you've said that it was -- is it true that
 7 it was -- that the Bentley board resolved to
 8 take that action?
 9 A. They did allow Mike Price the ability to open a
 10 commercial bank account in Spain if he needs to,
 11 which he didn't do.

12 MR. BOSTWICK: Okay. Mr. Stewart,
 13 I'll just note that this is something you-all
 14 put at issue in your affidavit. We have
 15 requested specific documentation regarding this,
 16 and it has not been provided. I'll request
 17 again. We're going to need to compel it before
 18 Mr. Price's deposition or, in addition, to set
 19 up another meeting to discuss it with
 20 Mr. Murphy, if necessary.

21 MR. STEWART: Well, we have responded
 22 in writing to the request, and you have our
 23 objection; and you have our position.

24 Q. Mr. Murphy, isn't it true that Bentley loaned

Page 45

1 shares of stock --
 2 A. That could be.
 3 Q. -- in place?
 4 A. That could be. I don't know exactly, but it
 5 could be.
 6 Q. So, in other words, your understanding is
 7 Bentley gave 6 to \$7 million U.S. to
 8 Laboratorios Belmac and, in return, ultimately
 9 received more shares of Laboratorios Belmac,
 10 correct?
 11 A. I'm not familiar --
 12 MR. STEWART: Objection. Objection,
 13 mischaracterization of testimony.
 14 Q. I'm sorry. Your answer was?
 15 A. I'm not familiar with what you're talking about.
 16 Q. As the CEO and chairman of the board of Bentley,
 17 you don't understand the circumstances of this 6
 18 to \$7 million U.S. loan to Laboratorios Belmac;
 19 is that your testimony?
 20 MR. STEWART: Objection to the
 21 characterization of loan. He testified it
 22 wasn't a loan, whatever it was.
 23 MR. BOSTWICK: Well, I don't think
 24 that's his testimony.

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| <p style="text-align: right;">Page 46</p> <p>1 A. It was not a loan. There was money due to us 2 for management fees.</p> <p>3 MR. STEWART: Mr. Murphy, if there's 4 no question pending --</p> <p>5 MR. BOSTWICK: I'm asking him exactly 6 to describe it.</p> <p>7 Q. Please continue.</p> <p>8 A. That was it.</p> <p>9 Q. Well, Mr. Murphy, you were clearly giving an 10 answer, and I would like to hear the end of that 11 answer.</p> <p>12 A. There's management fees that we charge to them, 13 and I believe it came to approximately 5 or 14 \$6 million. How that was accounted for or used, 15 I don't understand how it would have -- and the 16 CFO might be able to tell you exactly.</p> <p>17 Q. Okay. Let me show you another exhibit. 18 (2-page Document and Translation were 19 marked Exhibit Number 6 for 20 identification.)</p> <p>21 Q. I'm going to give you the Spanish document and 22 then a rough translation that we've provided you 23 with. This is Exhibit 6. And I'd ask you to 24 take a look at that.</p> | <p style="text-align: right;">Page 48</p> <p>1 Q. And below, the second portion says, "The new 2 shares are subscribed in favor of the following 3 entities that renounce any rights they may have 4 regarding the credits," meaning the loans. Do 5 you see that?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And then Bentley Pharmaceuticals is renouncing 8 rights to credits or loans of approximately 9 6 million euros. Do you see that?</p> <p>10 A. Uh-huh.</p> <p>11 Q. In favor of stock, that's Belmac stock; is that 12 correct?</p> <p>13 MR. STEWART: Objection.</p> <p>14 A. I don't know.</p> <p>15 Q. Okay. Is it your testimony that you don't 16 really understand what the arrangement between 17 Bentley and Belmac was with this 6 million euro 18 transaction?</p> <p>19 A. I really do not understand the accounting issues 20 that was involved in this.</p> <p>21 Q. All right. What was the 6 million euros used 22 for by Laboratorios Belmac?</p> <p>23 A. I don't know.</p> <p>24 Q. All right. So you're the chief executive</p> |
| <p style="text-align: right;">Page 47</p> <p>1 Have you had an opportunity to take a 2 look at that?</p> <p>3 A. Not yet.</p> <p>4 Yes.</p> <p>5 Q. Okay. The first paragraph here indicates that 6 certain agreements are unanimously adopted by 7 the entity's sole shareholder of Laboratorios 8 Belmac. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And the entity's sole shareholder, Laboratorios 11 Belmac's sole shareholder, is Bentley, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And your name is registered and referenced 14 there, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And this is an official document from the 17 Registration Mercantile of Madrid?</p> <p>18 A. Yes.</p> <p>19 Q. And under the first paragraph, it notes that 20 there was compensation in credit. Do you see?</p> <p>21 And it says, "It is declared that the credits," 22 in parentheses, "loans," "are liquidated." Do 23 you see that?</p> <p>24 A. Yes.</p> | <p style="text-align: right;">Page 49</p> <p>1 officer of Bentley, which extends 6 million 2 euros to Laboratorios Belmac, which you're also 3 the president of, but you don't know why and how 4 they used that funds --</p> <p>5 A. Do not know.</p> <p>6 MR. STEWART: Objection. Objection as 7 to the characterization of extending 6 million 8 euros to Belmac and argumentative. You may 9 answer.</p> <p>10 Q. You can answer.</p> <p>11 A. I did. I don't know. It's an accounting issue.</p> <p>12 Q. Did you discuss this accounting issue with 13 Michael Price before you signed this -- before 14 you gave your permission to register this 15 official document in Spain's registry?</p> <p>16 MR. STEWART: Objection as to 17 foundation. There's been no testimony with 18 respect to whether the witness understands or 19 has thoroughly read or, frankly, whether the 20 translation that is provided is a complete 21 translation of the Spanish document.</p> <p>22 Q. My question stands.</p> <p>23 A. I don't know whether I spoke with Mike Price 24 about this or not. I do not recollect.</p> |

13 (Pages 46 to 49)

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| <p style="text-align: right;">Page 50</p> <p>1 Q: I mean, do you make it a practice to understand 2 types of documents that you're signing in your 3 capacity as Bentley's CEO and chairman of the 4 board?</p> <p>5 MR. STEWART: Objection. This 6 document refers to Laboratorios Belmac. Do you 7 mean --</p> <p>8 MR. BOSTWICK: It says it's been 9 adopted by the entity's sole shareholder, which 10 he testified was Bentley.</p> <p>11 Can I have the question read back, 12 please?</p> <p>13 (Reporter read back the last question.)</p> <p>14 A. I depend on the executives and the talent around 15 me to guide me. If it is an accounting issue, 16 then I would go to Mike Price. He would guide 17 me because I do not know finance and accounting. 18 If it's scientific, I would have a scientist 19 give me a summary. So it is not my practice to 20 know every detail about every document I sign.</p> <p>21 Q. It is your -- is it your practice to understand 22 in general terms documents you sign on behalf of 23 Bentley or Belmac?</p> <p>24 MR. STEWART: Objection, relevancy.</p> | <p style="text-align: right;">Page 52</p> <p>1 A. No.</p> <p>2 Q. Okay. Let's look at another sentence in 3 Paragraph 7. At the end of the first sentence, 4 it says, "Belmac operates independently of 5 Bentley." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Is that the position you take when you make 8 representations to your business partners?</p> <p>9 A. Yes.</p> <p>10 Q. I'll show you a document.</p> <p>11 (Presentation of Perrigo was marked 12 Exhibit Number 7 for identification.)</p> <p>13 Q. I'll ask you to take a look at Exhibit 7 and 14 tell me if you recognize it.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What is this document?</p> <p>17 A. This document was probably used in the meeting 18 with Perrigo, an introductory type meeting.</p> <p>19 Q. Who is Perrigo?</p> <p>20 A. They are a manufacturer of OTC and generic 21 products.</p> <p>22 Q. What is OTC?</p> <p>23 A. Over the counter.</p> <p>24 Q. Let's look at the second page of that document.</p> |
| <p style="text-align: right;">Page 51</p> <p>1 A. I refer back to my previous answer. I rely upon 2 people to guide me in their particular areas of 3 expertise.</p> <p>4 Q. And what was Mr. Price's guidance about this 5 specific document, if you recall?</p> <p>6 A. As I said before, I don't recall whether I 7 talked to him about this or not.</p> <p>8 Q. Don't you -- let me take a look again at this 9 statement in Paragraph 7 of your sworn 10 declaration. "Belmac is not dependent on 11 Bentley for funding." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Isn't this extension of approximately 6 14 million -- 6 to \$7 million U.S. to Laboratorios 15 Belmac being dependent on Bentley for funding?</p> <p>16 A. No.</p> <p>17 MR. STEWART: Objection.</p> <p>18 Q. And didn't you think that the extension of 6 to 19 \$7 million of funding to Laboratorios Belmac by 20 Bentley was an important thing to mention and 21 disclose to the court when you made your 22 statements in your affidavit?</p> <p>23 MR. STEWART: Objection, assumes facts 24 not in evidence.</p> | <p style="text-align: right;">Page 53</p> <p>1 Is that a picture of Bentley's headquarters in 2 the U.S., the entryway?</p> <p>3 A. Yes.</p> <p>4 Q. And Page 3 of the document says Bentley 5 Operations, and under Bentley Operations, it has 6 Bentley headquarters U.S. and Bentley divisions, 7 one in Belmac?</p> <p>8 A. Yes. This presentation wasn't made by me. This 9 presentation was made by Jim Hand, who was with 10 us for a short time in business development.</p> <p>11 Q. Does Jim Hand have Bentley's authority to give 12 presentations of this type?</p> <p>13 A. He did at the time to make introductions, and 14 that's what he was doing here.</p> <p>15 Q. Were you a part of this meeting?</p> <p>16 A. I'm not sure if I was part of this meeting or 17 not. This could have been the very first 18 meeting. I don't know.</p> <p>19 Q. Have you seen this document before?</p> <p>20 A. I'm not sure if I've seen -- I think I have 21 seen. I certainly have seen some pages of this. 22 I recollect some pages of this. Others, I don't 23 recognize.</p> <p>24 Q. Did you ever provide any edits or changes to</p> |

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| <p>1 this document?</p> <p>2 A. No.</p> <p>3 Q. Let's go to the next page of the document, which</p> <p>4 is 22785, I believe. And that's a photograph?</p> <p>5 A. Yes.</p> <p>6 Q. It's difficult to see from the copier, but what</p> <p>7 is that a picture of?</p> <p>8 A. It's a picture of the headquarters building.</p> <p>9 Q. In the U.S.?</p> <p>10 A. Yes.</p> <p>11 Q. And the next page says Bentley Management. Do</p> <p>12 you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And under Bentley Management, it has you as</p> <p>15 chairman, president, and CEO, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And that was true in 2003?</p> <p>18 A. Yes.</p> <p>19 Q. And it has Michael Price as the vice president</p> <p>20 and CFO of Bentley?</p> <p>21 A. Yes.</p> <p>22 Q. And that's correct as of 2003?</p> <p>23 A. Yes.</p> <p>24 Q. And under that, it has Adolfo Herrera as VP of</p> | Page 54 | <p>1 Q. So Spain and other European countries?</p> <p>2 A. Right -- not only just European countries.</p> <p>3 Q. So Spain and other countries?</p> <p>4 A. Other countries, yes.</p> <p>5 Q. So that statement is correct?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Let me have you go to the last page of that</p> <p>8 document. And it says the Bentley Patent</p> <p>9 Estate, Omeprazole/Lansoprazole Patents. Is</p> <p>10 that correct?</p> <p>11 A. You want to repeat that?</p> <p>12 MR. BOSTWICK: I'll have the court</p> <p>13 reporter do that.</p> <p>14 (Reporter read back the last question.)</p> <p>15 A. That's down at the bottom. That's Spain's</p> <p>16 patents, yes. And this is Bentley collectively,</p> <p>17 including its subsidiaries. It's a summary of</p> <p>18 patents.</p> <p>19 Q. Looking back at your sworn declaration, which</p> <p>20 says, "Belmac operates independently of</p> <p>21 Bentley." You see that?</p> <p>22 A. What page?</p> <p>23 Q. This is Paragraph 7, the end of the first line.</p> <p>24 A. Yes, yes.</p> | Page 56 |
| <p>1 Spain divisions. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. So was Adolfo Herrera Bentley's vice president</p> <p>4 of the Spanish divisions of Bentley in 2003?</p> <p>5 A. I would not have written it this way. This is</p> <p>6 the way Jim Hand apparently put it down. I</p> <p>7 wouldn't have written it that way.</p> <p>8 Q. This -- how would you put it?</p> <p>9 A. I would put him as general manager of</p> <p>10 Laboratorios Belmac.</p> <p>11 Q. Okay. Was Adolfo Herrera a vice president at</p> <p>12 Bentley in 2003?</p> <p>13 A. I don't know. I don't know when he became vice</p> <p>14 president of Bentley.</p> <p>15 Q. But he did become vice president of Bentley?</p> <p>16 A. Yes. Yes, he did. I just don't know when.</p> <p>17 Q. What are his duties as the vice president of</p> <p>18 Bentley?</p> <p>19 A. It's just a title, an executive of Bentley.</p> <p>20 Q. Aren't his responsibilities as Bentley's vice</p> <p>21 president to carry out Bentley's goals in Spain?</p> <p>22 A. We're looking to expand beyond the borders of</p> <p>23 Spain, looking into Ireland. We're looking into</p> <p>24 other areas.</p> | Page 55 | <p>1 Q. "Belmac operates independently of Bentley."</p> <p>2 A. Yes.</p> <p>3 Q. That statement is certainly inconsistent with</p> <p>4 the presentation to Perrigo; isn't it?</p> <p>5 MR. STEWART: Objection,</p> <p>6 argumentative.</p> <p>7 A. I don't see that.</p> <p>8 Q. When the presentation says that Belmac is a</p> <p>9 Bentley division of the Bentley operations, that</p> <p>10 Adolfo Herrera is the vice president of Spanish</p> <p>11 divisions under Bentley management, don't you</p> <p>12 think that that suggests that Belmac does not</p> <p>13 operate independently of Bentley?</p> <p>14 MR. STEWART: Objection.</p> <p>15 A. Absolutely not.</p> <p>16 MR. STEWART: Objection, asked and</p> <p>17 answered, argumentative.</p> <p>18 Q. Your answer to that question is absolutely not?</p> <p>19 A. Yes, absolutely not.</p> <p>20 Q. Let's look at Paragraph 2 of your sworn</p> <p>21 declaration. This says you've been the director</p> <p>22 of Bentley since 1993, president since 1994, and</p> <p>23 the chairman and CEO since 1995. Is that</p> <p>24 correct?</p> | Page 57 |

15 (Pages 54 to 57)

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| <p>1 A. Yes.</p> <p>2 Q. Okay. Could you describe for me your duties as 3 president of Bentley?</p> <p>4 A. In which year?</p> <p>5 Q. Since 1994. Have those changed?</p> <p>6 A. My focus, my responsibilities have evolved 7 tremendously over that time.</p> <p>8 Q. Why don't you start by giving me -- I'm sorry. 9 Are you finished?</p> <p>10 A. In 1994, we were a research-based organization 11 here in the U.S., and we were struggling --</p> <p>12 Q. This is Bentley you're talking about?</p> <p>13 A. Bentley, yes. We had some subsidiaries in 14 France and in Spain. And then we moved the 15 company from Tampa to New Hampshire. We 16 acquired drug delivery technology, expanded our 17 research activities a great deal. Our portfolio 18 product in Europe grew a great deal. So it's 19 evolved and changed from 1994 to today.</p> <p>20 Q. Did your duties include defining scope of the 21 enterprise of Bentley and the nature of the 22 business strategy?</p> <p>23 A. Of course. You're always -- the strategic focus 24 is key for the CEO.</p> | <p>Page 58</p> <p>1 continues with respect to I don't understand 2 what the relevance of this witness' compensation 3 is to the issue of agency.</p> <p>4 MR. BOSTWICK: Are you instructing him 5 not to answer?</p> <p>6 MR. STEWART: I'm not.</p> <p>7 Q. Can you give me a sense of your salary, bonus, 8 and stock from 1994 to the present within 9 Bentley?</p> <p>10 A. I probably could not do an accurate job of 11 describing it. I don't know the number of 12 options issued at different times, its value. 13 The compensation consisted of stock options and 14 bonus and salary. In some years, there was 15 options; some years, there was no options; some 16 years, there was cash bonus, and in other years, 17 there was not. Off the top of my head to give 18 you year by year, impossible. As you said, 19 everything is all publicly available. We could 20 get that for you. I certainly can't rattle it 21 off the top of my head.</p> <p>22 Q. I'll accept that, and I would like to receive a 23 breakdown of that, but just for an 24 approximation -- and I'll do that so we don't</p> |
| <p>1 Q. So are the -- what is the difference between the 2 duties of president of Bentley and CEO of 3 Bentley, if there are any?</p> <p>4 A. There's really -- there's no distinction between 5 CEO and president. I mean the responsibilities 6 are very similar.</p> <p>7 Q. Can you tell me when you began -- I want to get 8 a sense of your salary, bonus, and stock while 9 you've been employed by Bentley.</p> <p>10 MR. STEWART: And the relevance of 11 this would be what?</p> <p>12 MR. BOSTWICK: The relevance of this? 13 Is there a specific objection to that?</p> <p>14 Objection to relevance in a discovery deposition 15 as to his salary? I don't understand your 16 objection.</p> <p>17 MR. STEWART: The objection goes to 18 confidential information pertaining to this 19 individual's individual compensation.</p> <p>20 MR. BOSTWICK: This is a publicly 21 traded company on the stock exchange. They're 22 required to disclose this publicly. I don't 23 understand your objection.</p> <p>24 MR. STEWART: Well, the objection</p> | <p>Page 59</p> <p>1 waste time in this deposition, but as an 2 approximation, approximately what was your 3 salary when you began in '94 or '95 as president 4 of Bentley?</p> <p>5 A. Approximately 175,000 in salary.</p> <p>6 Q. And there would have been some stock options or 7 bonuses with that?</p> <p>8 A. Yes, and I don't know the amount. I really 9 don't know. I mean I can -- it's available. I 10 just don't know the answer.</p> <p>11 Q. Let's take '97 as a random intermediate year, 12 '96 or '97. Approximately what was your salary 13 during that period of time? Did it go up?</p> <p>14 A. Yes, it went up, yes, but I could not with any 15 degree of comfort even give you an estimate. I 16 could be off tremendously.</p> <p>17 Q. What is it more recently? Like last year, for 18 example, what was your salary?</p> <p>19 A. About 600,000.</p> <p>20 Q. And was there also stock and bonuses tied --</p> <p>21 A. Yes.</p> <p>22 Q. -- to that? And that's in addition to the 23 \$600,000?</p> <p>24 A. Yes, uh-huh.</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 Q. What is the largest cash bonus you ever received 2 during this period 1994 to the present from 3 Bentley? 4 MR. STEWART: Objection. Objection, 5 relevancy. 6 A. It's approximately 300,000. 7 Q. That would have been for a given year? 8 A. Yes. 9 Q. Okay. And in terms of cumulative stock of 10 Bentley that has been given to you, do you have 11 a rough -- rough general estimate of the value 12 of that? 13 A. No, I do not. 14 Q. Okay. How much stock in Bentley do you own? 15 A. I have approximately -- I think we report around 16 4 percent. 17 Q. Around 4 percent of the company? 18 A. Yes. 19 Q. All right. So in addition to -- let me ask you 20 this about the salary. You began at 175 21 roughly, and last year was approximately 22 \$600,000. I'm just talking about salary, not 23 bonuses or stock. Correct? 24 A. Yes.</p> | <p>1 know. 2 Q. Because -- 3 MR. STEWART: Let me just interrupt. 4 I'm going to want to take a break in a couple of 5 minutes, so whenever would be a good stopping 6 point. 7 Q. Mr. Murphy, if you own 4 percent of Bentley, am 8 I correct that that means you effectively own 9 4 percent of Laboratorios Belmac as well because 10 Bentley is 100 percent shareholder of 11 Laboratorios Belmac? 12 A. I never looked at it that way. The only 13 publicly traded entity is Bentley. That's the 14 only vehicle that's publicly traded, and Bentley 15 has wholly owned subsidiaries. So I've never 16 viewed it that way. I've always viewed it as 17 Bentley owning Bentley stock. 18 Q. Okay. Would it be fair to say that you hold a 19 4 percent interest in the activities of 20 Laboratorios Belmac? 21 MR. STEWART: Objection; A, asked and 22 answered, and B, mischaracterization of any 23 prior testimony on that question. 24 A. I own 4 percent of Bentley stock.</p> |
| <p style="text-align: right;">Page 63</p> <p>1 Q. Was -- the increase in that salary between '94 2 or '95 and currently, was it relatively steady 3 or was there a specific year where it changed or 4 reduced dramatically? 5 A. I believe it was relatively steady. 6 Q. Okay. The increase, in other words, was 7 relatively steady in salary? 8 A. I believe so. I mean I would actually have to 9 see it listed out like you're trying to get 10 there so I could answer you correctly. 11 Q. Okay. In terms of bonuses, like this \$300,000 12 bonus, do you remember when that -- what year 13 that was? 14 A. That would have been for probably 2005, yeah, 15 2005. 16 Q. Were there any other years where you received 17 more than, say, \$100,000 in bonus? 18 MR. STEWART: Objection. I'm going to 19 put a continuing objection to the questions 20 regarding compensation and bonuses on grounds of 21 relevancy to the issues in this phase of 22 discovery. 23 A. I really don't know. I don't know. I don't 24 know the amounts and the dates. I really don't</p> | <p>1 Q. I'll just ask you a couple questions about 2 Bentley's employees, the number, and then we'll 3 take a break. Is that fair? 4 A. Sure. 5 Q. Okay. You say in Paragraph 4 that as of 6 November of 1998, Bentley had 17 employees. Is 7 that correct? 8 A. Yes. 9 Q. And what was the number of Bentley's employees 10 in 1994 or 1995 when you began as president of 11 Bentley? 12 A. I don't know. I don't remember the exact 13 numbers. 14 Q. Was it lower than 17? 15 A. Yes, it was, but in those early years, it was 16 higher -- not higher than 17, but it was higher 17 than, I think -- in '94, '95, I think it was a 18 higher number, and then we tailed back and then 19 rose again. I just don't know the specific 20 dates or the times or the numbers. 21 Q. Was it -- has the number of Bentley employees 22 ever been more than 17 since 1994? 23 A. I don't think so. 24 Q. Okay. What is the lowest number, you think, of</p> |

17 (Pages 62 to 65)

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| <p>1 Bentley's employees that there's been since 2 1994?</p> <p>3 A. Probably about six or eight.</p> <p>4 Q. So is it accurate to say that the number of 5 employees at Bentley in the U.S. has ranged 6 between approximately 6 and 17 or 18 for the 7 entire time since 1994?</p> <p>8 A. Yes.</p> <p>9 MR. BOSTWICK: Okay. We can take a 10 break now if you'd like.</p> <p>11 MR. STEWART: Before we take a break, 12 I just want to correct the record. I didn't 13 want to interrupt. I think you asked him or -- 14 you asked him a question which as part of the 15 question, my memory is, that you said so in 16 1998, Bentley -- you said that Bentley had 17 17 employees. I didn't know where the 1998 came 18 from.</p> <p>19 MR. BOSTWICK: Thank you for that 20 clarification. I think I meant to say at the 21 time -- and let's just ask the question again.</p> <p>22 Q. At the time of your declaration in November of 23 2004, it indicates -- you've stated that Bentley 24 had 17 employees, right?</p> | <p>Page 66</p> <p>1 the company, looking to build the company with a 2 portfolio of product and expand beyond the 3 borders of Spain, but all operational aspects 4 and day-to-day and hot, of course, speaking 5 Spanish, is left to management.</p> <p>6 Q. We've talked also about the fact that you hold 7 the title of consejero delegado unico at 8 Laboratorios Belmac. Is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. How would you describe your duties in that role?</p> <p>11 A. It's essentially the same. It's a board member 12 and executive position.</p> <p>13 Q. And that's the top position in the company?</p> <p>14 A. Yes.</p> <p>15 Q. And by "the company," I mean Laboratorios Belmac 16 now.</p> <p>17 A. Right.</p> <p>18 Q. Do you hold any other position at Laboratorios 19 Belmac in Spain?</p> <p>20 A. I don't believe so, no.</p> <p>21 Q. And has that been true since 1994? You've never 22 held another position?</p> <p>23 A. No, I don't believe I've ever had a different, 24 another position.</p> |
| <p>1 A. Right. That's the way I understood your 2 question.</p> <p>3 Q. And maybe I had simply misspoke in terms of the 4 date, but thanks for clarifying that.</p> <p>5 THE VIDEOGRAPHER: The time is 6 10:43 a.m. We're going off the record.</p> <p>7 (Recess)</p> <p>8 THE VIDEOGRAPHER: The time is 9 10:52 a.m. We're back on the record.</p> <p>10 Q. Okay. Mr. Murphy, we had been talking a little 11 bit about Bentley in the U.S., and now I'd like 12 to talk a little bit about the positions you 13 hold at Laboratorios Belmac in Spain. Okay?</p> <p>14 A. Okay.</p> <p>15 Q. I take it you're president of Laboratorios 16 Belmac in Spain?</p> <p>17 A. Yes.</p> <p>18 Q. How long have you held that position?</p> <p>19 A. I believe it was from 1995.</p> <p>20 Q. What are your duties as president of Belmac in 21 Spain?</p> <p>22 A. It's probably easiest to describe it as a 23 figurative position where, you know, I do 24 participate in looking at the strategic focus of</p> | <p>Page 67</p> <p>1 Q. At Laboratorios Belmac in Spain?</p> <p>2 A. At Laboratorios Belmac.</p> <p>3 Q. That's correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Do you receive a salary from Laboratorios Belmac 6 in Spain?</p> <p>7 A. No.</p> <p>8 Q. Have you ever received a salary from 9 Laboratorios Belmac in Spain?</p> <p>10 A. No.</p> <p>11 Q. Have you ever received bonuses of any type from 12 Laboratorios Belmac in Spain?</p> <p>13 A. No.</p> <p>14 Q. I guess you couldn't receive stock options 15 because they're not --</p> <p>16 A. They're not publicly traded.</p> <p>17 Q. So, in other words, the answer to that is no as 18 well?</p> <p>19 A. No.</p> <p>20 Q. When you travel over to Spain -- well, strike 21 that. I take it you have traveled to Spain many 22 times since 1994; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. All right. When you travel to Spain, does</p> |

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| <p>1 Bentley pay for that travel?</p> <p>2 A. Part of it.</p> <p>3 Q. How does that work?</p> <p>4 A. When I travel, Bentley will issue me my ticket,</p> <p>5 my airline ticket. When I'm over there,</p> <p>6 Laboratorios Belmac picks up the expenses of the</p> <p>7 hotels and food while I'm there.</p> <p>8 Q. Okay. So generally the breakdown is the flights</p> <p>9 and the specific travel arrangements are paid</p> <p>10 for by Bentley and then the expenses over in</p> <p>11 Spain are picked up by Belmac?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have a secretary at Bentley?</p> <p>14 A. Yes.</p> <p>15 Q. Who is that?</p> <p>16 A. That would be -- how do I lose my secretary's</p> <p>17 name? Give me a second. Don't tell --</p> <p>18 MR. STEWART: She is going to kill</p> <p>19 you.</p> <p>20 A. Jean DeRoche. The first name that came to my</p> <p>21 mind was my wife's name. Oh, dear.</p> <p>22 Q. I'll tell you what, we won't show this to either</p> <p>23 your wife or your secretary. I don't think</p> <p>24 that's getting better.</p> | <p>Page 70</p> <p>1 Q. Have you ever sent a letter out on Belmac</p> <p>2 letterhead that you recall?</p> <p>3 A. I don't know. I don't know.</p> <p>4 Q. You can't recall any?</p> <p>5 A. I can't recall any.</p> <p>6 Q. Okay. Do you have -- you have a Bentley</p> <p>7 business card that you give out --</p> <p>8 A. Yes.</p> <p>9 Q. -- to people? That's correct?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have a Belmac -- a Laboratorios Belmac</p> <p>12 business card?</p> <p>13 A. Yes.</p> <p>14 Q. When -- on what occasions do you give that out?</p> <p>15 A. When I go to Europe, I routinely would give out</p> <p>16 both cards and I still do give out both cards. It</p> <p>17 depends, you know, when I'm meeting with</p> <p>18 somebody, I may be acting as the representative</p> <p>19 of Laboratorios Belmac, as its agent, trying to</p> <p>20 bring business in, and other times I'm looking</p> <p>21 for drug delivery type activity and I have the</p> <p>22 Bentley card.</p> <p>23 Q. In your relationship with Ethypharm, do you</p> <p>24 recall what types of business cards you gave</p> |
| <p>1 MR. STEWART: By agreement.</p> <p>2 A. Jean DeRoche.</p> <p>3 Q. Jean DeRoche. How long has Jean been your</p> <p>4 secretary?</p> <p>5 A. Approximately one year.</p> <p>6 Q. Who was your secretary at Bentley before Jean?</p> <p>7 A. That would be Celia Thompson.</p> <p>8 Q. How do you spell that first name?</p> <p>9 A. C E L I A.</p> <p>10 Q. And how long was Ms. Thompson your secretary at</p> <p>11 Bentley?</p> <p>12 A. Since 1994.</p> <p>13 Q. And do you have a formal secretary at Belmac?</p> <p>14 A. No.</p> <p>15 Q. Do you have -- you have Bentley stationery,</p> <p>16 correct, that you send letters out on?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have Belmac stationery that you send</p> <p>19 letters out on?</p> <p>20 A. No, I do not.</p> <p>21 Q. So you've never sent a letter out on Belmac</p> <p>22 letterhead, for example?</p> <p>23 A. I don't have any here. The Belmac stationery is</p> <p>24 in Spain.</p> | <p>Page 71</p> <p>1 out, if any, to Bentley -- to Ethypharm people?</p> <p>2 A. I feel very confident in saying that I would</p> <p>3 have given them both.</p> <p>4 Q. Why?</p> <p>5 A. Because my discussions with Ethypharm had to do</p> <p>6 sometimes with Laboratorios Belmac and sometimes</p> <p>7 to do with Bentley.</p> <p>8 Q. Let's talk about the Belmac board of directors.</p> <p>9 Okay?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Do you hold regular meetings with</p> <p>12 the people on the Laboratorios Belmac board of</p> <p>13 directors like you do at Bentley?</p> <p>14 A. No. It's more of a formality.</p> <p>15 Q. Can you explain that?</p> <p>16 A. It means that the statutory documents are</p> <p>17 drafted each year or whatever period of time</p> <p>18 would be required by Spanish law. We would --</p> <p>19 the three directors would sign them -- review</p> <p>20 them, sign them, and they'd be submitted.</p> <p>21 Q. And that's a once-a-year process approximately?</p> <p>22 A. I think it is once a year.</p> <p>23 Q. I want to talk now about a theme that runs</p> <p>24 through your sworn declaration as I read it, and</p> |

19 (Pages 70 to 73)

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| <p>1 the theme I'm referring to is the idea you 2 express in several different sentences that 3 Bentley generally and you specifically had 4 little or no involvement in either the 5 Bentley – I'm sorry, the Belmac operations or 6 in negotiating with Ethypharm. And let me refer 7 you to some of the specific statements that I'm 8 talking about. Okay? I'll throw you – I'll 9 show you three as examples of this. In 10 Paragraph 12 – again, we're back on 11 Exhibit 1 – in the middle of that paragraph, it 12 says, "I" – and I take it that means you, Jim 13 Murphy – "I am not and was not involved in 14 Belmac's operations." Do you see that? 15 A. Yes. 16 Q. In Paragraph 18, again in the middle, the 17 sentence reads, "The terms of any agreements 18 between Ethypharm and Belmac were negotiated by 19 representatives of Belmac, specifically the 20 Belmac general managers, not Bentley." Do you 21 see that? 22 A. Yes. 23 Q. And on 24, you describe some of your 24 interactions in two distinct contexts, and you</p> | <p>Page 74</p> <p>1 Q. But at any rate, it was signed sometime in the 2 year 2000? Is that your best memory? 3 A. Yes. 4 Q. And that's your signature on the second page? 5 A. Yes. 6 Q. Is it your position that this confidentiality 7 agreement doesn't have anything to do with the 8 business of omeprazole with Ethypharm? 9 A. Absolutely nothing to do with omeprazole. 10 Q. And nothing to do with Lansoprazole? 11 A. Correct. 12 Q. Or the pelletization or microencapsulation of 13 omeprazole and Lansoprazole? 14 A. Correct. It's specific in the second paragraph. 15 Q. What does this confidentiality and nondisclosure 16 agreement have to do with? <i>oh my god</i> A. This had to do with Bentley talking with 17 Ethypharm about its confidential information 18 concerning enhancement and absorption of 19 permeation of drugs through biological 20 membranes, such as transdermal. 21 Q. Such as transdermal? 22 A. Transdermal delivery of drugs. 23 Q. Transdermal meaning through the skin? 24</p> |
| <p>Page 75</p> <p>1 end that paragraph about contacts with Ethypharm 2 by saying, "These contacts were sporadic and did 3 not concern the omeprazole business between 4 Ethypharm and Belmac." Do you see that? 5 A. Yes. 6 Q. Let me show you a document. 7 (Confidentiality and Non-Disclosure 8 Agreement was marked Exhibit Number 8 9 for identification.) 10 Q. I'm going to ask you to take a look at that, if 11 you will, and see if you recognize it. 12 A. Yes. 13 Q. Okay. This is a confidentiality agreement 14 between Bentley Pharmaceuticals, Inc. and 15 Ethypharm; is that correct? 16 A. Yes. 17 Q. And the date is April 7th, 2000? 18 A. No. This looks like it's the 10th day of 19 February, 2000. 20 Q. I see. You're reading from the first page, 21 right, the first sentence? 22 A. Uh-huh. 23 Q. And I was reading from the last. 24 A. Okay.</p> | <p>Page 77</p> <p>1 A. Correct. 2 Q. Let me get back to the nature of your contacts 3 with Ethypharm generally. Okay? I take it from 4 1994 through 2002 or so, you had a number of 5 meetings, telephone calls, and contacts with 6 people from Ethypharm; is that correct? 7 A. Yes. 8 Q. And some of the people who you either spoke with 9 by phone or met with would have been Patrice 10 DeBregeas, the CEO of Ethypharm France? 11 A. Yes. 12 Q. Gerard Leduc, one of the other main officers at 13 Ethypharm France? 14 A. Yes. 15 Q. Claude Dubois, the general manager of Ethypharm 16 France? 17 A. Yes. 18 Q. Pierre Germain, another general manager of 19 France? 20 A. Yes. 21 Q. Adolfo de Basilio, general manager of Ethypharm 22 Spain? 23 A. Yes. 24 Q. Are there others that you recall meeting with</p> |

20 (Pages 74 to 77)

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| <p>1 and speaking with from Ethypharm? Page 78</p> <p>2 A. There were others that had come into meetings,</p> <p>3 but I don't remember their name nor their role.</p> <p>4 Q. Okay. Do you remember Roseline Joannesse? Did</p> <p>5 you meet her?</p> <p>6 A. I believe I did meet her.</p> <p>7 Q. What position did you understand she held, if</p> <p>8 any?</p> <p>9 A. I thought she was the attorney.</p> <p>10 Q. All right. I take it from 1994 to, say, 2002,</p> <p>11 you had regular telephone calls with the general</p> <p>12 managers at Laboratorios Belmac?</p> <p>13 A. Yes.</p> <p>14 Q. And with staff at Laboratorios Belmac?</p> <p>15 A. Not as much with staff. My contact the vast</p> <p>16 majority of times, with the general manager.</p> <p>17 Q. Do you speak Spanish?</p> <p>18 A. No.</p> <p>19 Q. We took Mr. Gonzalez Azpetia's deposition a few</p> <p>20 weeks ago, and it struck me that he didn't speak</p> <p>21 very good English.</p> <p>22 A. Right.</p> <p>23 Q. How is it that you were able to converse with</p> <p>24 Clemente Gonzalez Azpetia when he was general</p> | <p>1 Q. Certainly better than Mr. Gonzalez Azpetia?</p> <p>2 A. Mr. Gonzalez really didn't speak English much at</p> <p>3 all, about the same way I speak Spanish, just a</p> <p>4 few words.</p> <p>5 Q. How is Mr. Herrera's English?</p> <p>6 A. It's good.</p> <p>7 Q. Does he write in English; do you know?</p> <p>8 A. Yes.</p> <p>9 Q. How -- let's go to some specific discussions</p> <p>10 that you had with Ethypharm. I believe maybe</p> <p>11 some documents will help in this regard.</p> <p>12 (Letter to Mr. De Basilio from</p> <p>13 Mr. Murphy, dated December 6, 1994 was</p> <p>14 marked Exhibit Number 9 for</p> <p>15 identification.)</p> <p>16 Q. I'm showing you Exhibit 9, and I'd ask you to</p> <p>17 take a look at that document.</p> <p>18 Do you recognize that document?</p> <p>19 A. I don't remember it, but I obviously wrote this.</p> <p>20 Q. And is it fair to say that this is a</p> <p>21 December 6th, 1994 letter from you to Mr. Adolfo</p> <p>22 de Basilio?</p> <p>23 A. Yes.</p> <p>24 Q. And this is on Belmac Corporation letterhead,</p> |
| <p>1 manager? Page 79</p> <p>2 A. Through his secretary.</p> <p>3 Q. What secretary was that?</p> <p>4 A. Laura Peterson.</p> <p>5 Q. Did you also have weekly telephone conversations</p> <p>6 with him?</p> <p>7 A. No.</p> <p>8 Q. Okay. Did you have conversations where he and</p> <p>9 others who spoke English at Laboratorios Belmac</p> <p>10 attended?</p> <p>11 A. Yes.</p> <p>12 Q. Who were those people?</p> <p>13 A. Fernando Berenguer.</p> <p>14 Q. And he -- am I correct to say he is now</p> <p>15 deceased?</p> <p>16 A. Yes.</p> <p>17 Q. Anyone else?</p> <p>18 MR. STEWART: What time are we</p> <p>19 talking?</p> <p>20 Q. Any time from '94 to 2002.</p> <p>21 A. Oh, yes, Adolfo Herrera.</p> <p>22 Q. So Adolfo Herrera speaks English; is that</p> <p>23 correct?</p> <p>24 A. Yes.</p> | <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And Belmac Corporation, as we've discussed, is</p> <p>4 the early name for Bentley, correct?</p> <p>5 A. Yes.</p> <p>6 Q. So that's the U.S.A. headquarters?</p> <p>7 A. Yes.</p> <p>8 Q. At this time, were you president of Belmac</p> <p>9 Corporation in the U.S.?</p> <p>10 A. I was president of Belmac U.S., yes.</p> <p>11 Q. I want to refer you to the last paragraph there,</p> <p>12 and it seems to reference the first paragraph</p> <p>13 where you're going to travel to France on</p> <p>14 December 12th. It says, "During my visit to</p> <p>15 Paris, I'm most anxious to speak about</p> <p>16 opportunities to expand our collaborative</p> <p>17 relationship in the areas of manufacturing,</p> <p>18 microgranulation of products, erythromycin,</p> <p>19 Portugal, and other ways in which our companies</p> <p>20 can grow and prosper together." Do you see</p> <p>21 this?</p> <p>22 A. Yes.</p> <p>23 Q. Isn't this a contact with Ethypharm that does</p> <p>concern the omeprazole business between</p> |

21 (Pages 78 to 81)

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| <p>1 Ethypharm and Laboratorios Belmac?</p> <p>2 A. I don't think that's the restricted -- I don't</p> <p>3 think it is.</p> <p>4 Q. Aren't --</p> <p>5 A. Because I think we were doing -- at this time,</p> <p>6 we being Laboratorios Belmac, was doing</p> <p>7 manufacturing and contract manufacturing of</p> <p>8 products, and I don't believe the only</p> <p>9 microgranulated product was that.</p> <p>10 Q. So one microgranulation -- strike that. Am I</p> <p>11 correct to say that one product that used</p> <p>12 microgranulation -- the process of</p> <p>13 microgranulation was omeprazole?</p> <p>14 A. Yes.</p> <p>15 Q. And that there were others, such as</p> <p>16 Lansoprazole?</p> <p>17 A. No.</p> <p>18 Q. What's wrong about that statement?</p> <p>19 A. Lansoprazole was never produced there.</p> <p>20 Q. Is Lansoprazole a product that uses</p> <p>21 microgranulation?</p> <p>22 A. Yes.</p> <p>23 Q. So am I correct in understanding your testimony</p> <p>24 that omeprazole is one product that used</p> | <p>Page 82</p> <p>1 Q. And when you say who we are on both sides, you</p> <p>2 mean both Bentley as --</p> <p>3 A. Bentley Corporation and what its research</p> <p>4 activity is and what Laboratorios Belmac had</p> <p>5 underway.</p> <p>6 Q. So let me ask you this question: Putting aside</p> <p>7 for the moment whether you're also acting as --</p> <p>8 in some capacity as Laboratorios Belmac, it's</p> <p>9 true, is it not, that you are acting for Belmac</p> <p>10 Corporation in the U.S., later Bentley, when you</p> <p>11 write this letter?</p> <p>12 A. When I write this letter, I'm acting on behalf</p> <p>13 of both companies, both entities.</p> <p>14 Q. Did you have Bentley's authorization to act for</p> <p>15 Laboratorios Belmac in negotiations regarding</p> <p>16 transactions with the Spanish subsidiary?</p> <p>17 MR. STEWART: Objection, vague.</p> <p>18 Q. You were going -- let me ask the question again.</p> <p>19 MR. BOSTWICK: That's a fair</p> <p>20 objection.</p> <p>21 Q. You were going to travel to Paris to meet with</p> <p>22 representatives of Ethypharm in December of</p> <p>23 1994, correct?</p> <p>24 A. Apparently, I was.</p> |
| <p>1 microgranulation, but there were other products</p> <p>2 that used microgranulation as well?</p> <p>3 A. That's my understanding.</p> <p>4 Q. Well -- so doesn't a portion of this contact</p> <p>5 concern the manufacturing of microgranulation of</p> <p>6 products such as omeprazole?</p> <p>7 A. It could be.</p> <p>8 Q. Did -- weren't you acting as the president of</p> <p>9 Belmac Corporation when you wrote this letter?</p> <p>10 A. In this case, this is combining. This would be</p> <p>11 an occasion where I would be looking at the</p> <p>12 interests of both of our companies because in</p> <p>13 that last sentence -- the last paragraph,</p> <p>14 erythromycin is a research program we had in the</p> <p>15 United States, and I wanted to know if they were</p> <p>16 interested in maybe collaborating. The</p> <p>17 microgranulation and the manufacturing is</p> <p>18 certainly a Laboratorios Belmac discussion.</p> <p>19 Q. Okay.</p> <p>20 A. But looking back at the date of this, this is</p> <p>21 really almost like an introductory. This is</p> <p>22 right when I began. This is almost an</p> <p>23 introductory meeting to talk about who we are on</p> <p>24 both sides.</p> | <p>Page 83</p> <p>1 Q. Did you have Bentley's authority to negotiate</p> <p>2 transactions for Laboratorios Belmac at that</p> <p>3 time?</p> <p>4 A. My position as probably president of the parent</p> <p>5 company would give me the authority to negotiate</p> <p>6 for either of the two entities.</p> <p>7 Q. Let me show you another exhibit here.</p> <p>8 (Belmac Corporation Board of Directors</p> <p>9 December 8, 1994 Meeting Minutes were</p> <p>10 marked Exhibit Number 10 for</p> <p>11 identification.)</p> <p>12 Q. And I'll ask you if you recognize Exhibit 10 as</p> <p>13 minutes of the Bentley board meeting on</p> <p>14 December 8th, 1994, which was then called Belmac</p> <p>15 Corporation in the U.S.</p> <p>16 A. Yes.</p> <p>17 Q. And you attended that meeting as an official of</p> <p>18 Belmac Corporation, which later changed its name</p> <p>19 to Bentley?</p> <p>20 A. Yes.</p> <p>21 Q. Let me ask you to look at Page 2840. And I'm</p> <p>22 going to read you the middle paragraph there.</p> <p>23 It says, "Mr. Murphy asked for authority to</p> <p>24 negotiate transactions involving the Spanish</p> |

22 (Pages 82 to 85)

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| <p>1 subsidiary. The board affirmed that the 2 authority to negotiate has already been vested, 3 but any agreement must be subject to board 4 approval." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Is that a correct reflection of what happened at 7 that board meeting?</p> <p>8 A. I don't remember this discussion at the board 9 meeting.</p> <p>10 Q. Do you have any reason to doubt that that's an 11 accurate translation of what happened?</p> <p>12 A. This is probably accurate minutes. Our minutes 13 are normally very accurate. I just don't 14 remember what this involved. Was it a single 15 transaction, what it was, I don't know.</p> <p>16 Q. Do you have any knowledge of this delegation of 17 authority ever being revoked or amended?</p> <p>18 A. No, I don't.</p> <p>19 Q. I'm sorry. That was no, you don't?</p> <p>20 A. No.</p> <p>21 Q. This is -- the minutes of these board meeting -- 22 this board meeting is December 8th, 1994, 23 correct?</p> <p>24 A. Yes.</p> | <p>Page 86</p> <p>1 shifts for the manufacture of omeprazole during 2 that time?</p> <p>3 A. I don't remember.</p> <p>4 Q. Did you increase the staff for the increased 5 production of omeprazole during that time?</p> <p>6 A. I didn't do any of the hiring, and I was not 7 directly involved in any of the manufacturing. 8 So to answer your question, no, I did not.</p> <p>9 Q. Did you discuss reopening the Galenic Department 10 in Zaragoza with Belmac personnel?</p> <p>11 A. Belmac management may have been during that 12 time. I don't know manufacturing. I don't know 13 the formulations. I would not get directly 14 involved in any of that.</p> <p>15 Q. Did you, in essence, restructure the operations 16 of Belmac --</p> <p>17 A. No.</p> <p>18 Q. -- during that December '94 period?</p> <p>19 A. Only with regard to Ayala and Clemente.</p> <p>20 Q. Gonzalez?</p> <p>21 A. Gonzalez.</p> <p>22 Q. Did you enter into negotiations regarding 23 omeprazole and other matters with Ethypharm in 24 December of 1994?</p> |
| <p>1 Q. So that's two days after you send your letter to 2 Mr. De Basilio?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And four days before you travel to Paris?</p> <p>5 A. I don't know. I don't know when I went to 6 Paris.</p> <p>7 Q. Is that correct based on your reading of 8 Exhibit 9, the letter to Mr. De Basilio?</p> <p>9 A. He didn't -- I don't have his response. If this 10 meeting was -- these dates were okay, whether 11 I've got a hotel. I assume that these dates are 12 probably correct, but I'm not sure.</p> <p>13 Q. All right. In December 1994, you did travel to 14 Paris and to Spain to meet with Ethypharm 15 representatives; didn't you?</p> <p>16 A. I may have.</p> <p>17 Q. Did you fire Mr. De Ayala as general manager at 18 that time?</p> <p>19 A. We negotiated his departure.</p> <p>20 Q. Around that time period, December of 1994?</p> <p>21 A. Probably around that time period. I don't know 22 that exact date either, but around that time 23 period.</p> <p>24 Q. Did you authorize the increase in the number of</p> | <p>Page 87</p> <p>1 A. I know I met with Adolfo Basilio on several 2 occasions around that time period.</p> <p>3 Q. Do you recall meeting with Mr. DeBregas in 4 Paris during that time period?</p> <p>5 A. I believe so, yes.</p> <p>6 Q. What do you recall about the negotiations that 7 occurred during that period with either Mr. De 8 Basilio or Mr. DeBregas?</p> <p>9 A. I don't remember any of it.</p> <p>10 Q. Okay.</p> <p>11 A. It was a long time ago.</p> <p>12 Q. Let me show you another document.</p> <p>13 THE VIDEOGRAPHER: Counselor, five 14 minutes.</p> <p>15 MR. BOSTWICK: Okay.</p> <p>16 (Fax to Mr. De Basilio from Mr. Murphy, 17 dated November 19, 1995 was marked 18 Exhibit Number 11 for identification.)</p> <p>19 Q. Let me show you that document, and I'll ask if 20 you recognize it.</p> <p>21 Do you recognize that document, 22 Exhibit 11?</p> <p>23 A. No, I don't remember it, but I know what it's 24 about.</p> |

23 (Pages 86 to 89)

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| <p style="text-align: right;">Page 90</p> <p>1 Q. What's it about?</p> <p>2 A. This is apparently a draft of a press release</p> <p>3 when I was trying to develop a relationship with</p> <p>4 Ethypharm to develop an amorphous form of</p> <p>5 erythromycin.</p> <p>6 Q. Was the relationship also one where you were</p> <p>7 trying to define a manufacturing relationship</p> <p>8 with Ethypharm relating to omeprazole and other</p> <p>9 microgranulated products?</p> <p>10 A. This was an attempt to try to bring the two</p> <p>11 companies together in a research and development</p> <p>12 collaboration, which was not successful.</p> <p>13 Q. What two companies?</p> <p>14 A. Ethypharm and Bentley for the amorphous</p> <p>15 erythromycin. The manufacturing of that product</p> <p>16 would be done at Belmac.</p> <p>17 Q. Didn't -- I'm sorry. Are you finished?</p> <p>18 A. Yes.</p> <p>19 Q. Didn't this also relate -- this related to a</p> <p>20 joint venture of Ethypharm with France and</p> <p>21 Belmac at its manufacturing facilities in</p> <p>22 Zaragoza, Spain, correct? I'm reading from the</p> <p>23 first paragraph of the press release.</p> <p>24 A. It says it's a wholly owned subsidiary of</p> | <p style="text-align: right;">Page 92</p> <p>1 conditions and relationships. It never got that</p> <p>2 far.</p> <p>3 Q. So you never sent draft agreements back and</p> <p>4 forth?</p> <p>5 A. I hate to say and acknowledge your term</p> <p>6 "negotiation." It didn't get that far.</p> <p>7 Q. Do you recall sending documents back and forth</p> <p>8 with terms and conditions?</p> <p>9 A. No.</p> <p>10 THE VIDEOGRAPHER: Counselor, one</p> <p>11 minute.</p> <p>12 MR. BOSTWICK: Why don't we go ahead</p> <p>13 and change the tape? That's risky to ask a</p> <p>14 question at that stage.</p> <p>15 THE VIDEOGRAPHER: The time is</p> <p>16 11:32 a.m. on July 19th, 2006. This is the end</p> <p>17 of Tape Number 1 in the videotaped deposition of</p> <p>18 Mr. James Murphy.</p> <p>19 (Recess)</p> <p>20 THE VIDEOGRAPHER: The time is</p> <p>21 11:33 a.m. on July 19th, 2006. This is Tape</p> <p>22 Number 2 in the videotaped deposition of</p> <p>23 Mr. James Murphy.</p> <p>24 Q. Mr. Murphy, let's take a look at this letter and</p> |
| <p style="text-align: right;">Page 91</p> <p>1 Belmac.</p> <p>2 Q. Okay. But am I reading this? It says it's the</p> <p>3 first stage agreement to establish a joint</p> <p>4 venture with Ethypharm of France in the Belmac</p> <p>5 manufacturing facilities in Zaragoza, Spain,</p> <p>6 correct?</p> <p>7 A. Yes. This was an attempt at doing it, yes.</p> <p>8 Q. Okay. And my understanding is you were</p> <p>9 negotiating with Ethypharm representatives both</p> <p>10 in France and Spain, correct?</p> <p>11 A. I don't remember whether I was negotiating with</p> <p>12 both France and Spain.</p> <p>13 Q. You know you were negotiating with France and</p> <p>14 you're not sure about Spain or vice versa?</p> <p>15 A. Well, this only went to Adolfo Basilio. So this</p> <p>16 was discussions apparently with the director</p> <p>17 general of Ethypharm Spain.</p> <p>18 Q. And does it -- does this negotiation that you</p> <p>19 had also include the expansion of the</p> <p>20 manufacturing relationship that it already had</p> <p>21 with Ethypharm relating to omeprazole?</p> <p>22 A. I think you're making a leap of faith by saying</p> <p>23 negotiating. It never got that far because</p> <p>24 negotiations would be a definition of terms and</p> | <p style="text-align: right;">Page 93</p> <p>1 press release a little more carefully. Okay?</p> <p>2 A. Yes.</p> <p>3 Q. All right. The first thing is on the first</p> <p>4 page, it's sent from Belmac Corporation, the</p> <p>5 headquarters in the U.S. that later becomes</p> <p>6 Bentley, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you designate -- you're writing this as</p> <p>9 James R. Murphy, president and CEO of Bentley,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And you are saying to Adolfo de Basilio that you</p> <p>13 are attaching a public disclosure which you want</p> <p>14 to release on January -- on or around</p> <p>15 January 19th, 1995, correct?</p> <p>16 A. Yes, and in anticipation if we could come to</p> <p>17 terms.</p> <p>18 Q. And you're discussing the basic framework of the</p> <p>19 future relationship between Bentley,</p> <p>20 Laboratorios Belmac, and Ethypharm, correct?</p> <p>21 MR. STEWART: Objection, mis-</p> <p>22 characterization. You're saying discussing in</p> <p>23 connection with this document or in connection</p> <p>24 with other meetings?</p> |

24 (Pages 90 to 93)

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| <p>1 Q. In the context of this letter that you're 2 sending. 3 A. No, this is describing a potential in drug 4 delivery, which did not occur. 5 Q. Let's see if some of these things occurred or 6 didn't. Let's look at the announcement. You're 7 indicating in this announcement -- and let's 8 look at the second to last paragraph: "Under 9 the agreement, Belmac will also further expand 10 the manufacturing relationship which it already 11 has with Ethypharm." Do you see that? 12 A. Yes. 13 Q. And that's a manufacturing relationship relating 14 to omeprazole and other products, correct? 15 A. Yes. 16 Q. Okay. And you're going to expand that 17 manufacturing relationship by training more 18 Belmac personnel, correct? 19 A. No. 20 Q. Well, isn't that what that line says? Did I 21 read that correctly? 22 A. Well, this is trying to expand our relationship 23 with them, and it would be, as you see in the 24 second paragraph, new oral dosage forms, new</p> | <p>Page 94</p> <p>1 authorizing the training of more Belmac 2 personnel to fulfill the increased demand in 3 contract manufacturing based on Ethypharm 4 technology, meaning existing omeprazole? 5 A. Not in this context of this product -- of this 6 release, no. 7 Q. Do you recall authorizing the extension of 8 Belmac personnel to increase the demand for 9 additional omeprazole around the time frame in 10 December, January of 1994 and '95? 11 A. No. If it was increased, it would be by way of 12 Clemente Gonzalez. 13 Q. Okay. When was Clemente Gonzalez put in as a 14 general manager? 15 A. Around this time frame. Maybe a little earlier. 16 Q. Did Mr. Gonzalez participate in discussions with 17 Adolfo de Basilio and Patrice DeBregues around 18 this time, January and December of -- 19 A. I do not know. 20 Q. Isn't it true that you were the only one who 21 spoke to Ethypharm representatives during these 22 December and January trips to Spain and France? 23 A. I don't recall. 24 Q. Let's show you another document.</p> |
| <p>1 products, products that are not currently there. 2 All right? So I don't see where you're talking 3 about the hiring of people here. Explain that 4 to me again. 5 Q. Well, it's not just talking about doing new 6 products; is it? It's talking about expanding 7 the existing products by training more Belmac 8 personnel to fulfill an increasing demand in 9 contract manufacturing based on Ethypharm 10 technologies, correct? 11 A. I'm not sure if I understand the meaning of that 12 at this late date. I'm looking at this, and my 13 recollection is we were trying to look to new 14 products. New oral dosage forms, okay, would be 15 a new product, erythromycin, which was not being 16 produced, and new -- and extended release 17 formulations of spironolactone were not being 18 produced for research; and extended omeprazole 19 was not being produced and not researched, and 20 that combining our technologies and our ideas 21 may require more personnel. This was all in 22 contemplation that could happen or may. It 23 didn't. 24 Q. Do you recall authorizing -- you specifically</p> | <p>Page 95</p> <p>Page 97</p> <p>1 (Letter of Intent was marked Exhibit 2 Number 12 for identification.) 3 Q. Okay. This is Exhibit 12. I'll ask you if you 4 recognize that document. 5 A. I do not remember this document. Who produced 6 this? Who's the author? 7 Q. That's my question to you. 8 A. Oh, it's the same question I have to you. I 9 don't know. 10 Q. Do you -- okay. You don't recall Bentley 11 sending this letter -- this letter of intent to 12 Ethypharm in or around early 1995? 13 A. I do not recall this. 14 Q. Okay. Let's read the first sentence. It says, 15 "This letter of intent is presented to Ethypharm 16 by Belmac Corporation." Do you see that? 17 A. Yes. 18 Q. So that would be Belmac Corporation in the U.S., 19 correct? 20 A. Yes. 21 Q. So it's your understanding that this letter of 22 intent was presented to Ethypharm by head- 23 quarters U.S.A.? 24 MR. STEWART: Objection.</p> |

25 (Pages 94 to 97)

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| <p>1 A. I don't remember this.</p> <p>2 Q. Okay. And it says here that it's presented in 3 good faith to ensure that Belmac Corporation -- 4 that's the U.S. headquarters, correct?</p> <p>5 A. I don't --</p> <p>6 MR. STEWART: Are you asking to 7 agree --</p> <p>8 A. I don't agree that I know this document. So if 9 you're asking me to testify to anything in this 10 document, I do not know this document. I don't 11 know if this was produced by us. It appears -- 12 it gives the appearance of being produced by us. 13 I don't think it was. I don't recognize this.</p> <p>14 Q. You don't --</p> <p>15 A. And this is not in my writing, and I don't know 16 whose writing is on there or where this comes 17 from. This font doesn't even look familiar that 18 we would use or ever have used. I don't know 19 this document.</p> <p>20 Q. Okay. Do you recall whether -- strike that. I 21 understand as you sit here today you don't 22 recall this document. What I'm going to ask you 23 about is whether or not this document is a fair 24 expression of some of the things that were going</p> | <p>Page 98</p> <p>1 MR. BOSTWICK: I'm going to say let's 2 take a look and see if it does.</p> <p>3 Q. Okay?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember you as someone from Belmac 6 Corporation telling Ethypharm that Belmac 7 Corporation would employ its best efforts to 8 enter and conclude negotiations for a joint 9 venture relationship around this time frame?</p> <p>10 A. I do not remember that.</p> <p>11 Q. Okay. And do you recall -- I'm referring to the 12 second paragraph now -- that it was the 13 intention of both parties, meaning Ethypharm and 14 Belmac Corporation U.S.A., to enter into mutual 15 secrecy agreements to ensure proprietary rights 16 of each party?</p> <p>17 A. I don't remember that either.</p> <p>18 Q. Okay. And how about the third paragraph? Do 19 you recall discussing with Ethypharm 20 representatives a contract for the occupancy of 21 space by Ethypharm in the Zaragoza facilities?</p> <p>22 A. Yes.</p> <p>23 Q. You do recall that?</p> <p>24 A. Yes.</p> |
| <p>1 on around January of 1995 and December of 1994. 2 Okay?</p> <p>3 A. How do you know this is 1995? I'd like to know 4 where this came from. I don't know it. Where's 5 1995?</p> <p>6 Q. Let's -- do you see the press release that we 7 just looked at?</p> <p>8 A. Yes.</p> <p>9 Q. That's exhibit --</p> <p>10 A. Yes, the one you just gave me.</p> <p>11 MR. STEWART: 11.</p> <p>12 Q. 11. Don't you think this relates to the same 13 subject matter as that document? In other 14 words, Exhibit 11 and Exhibit 12 relate to the 15 same subject matter; don't they?</p> <p>16 A. Yes, they do.</p> <p>17 Q. Okay. So let's see if this doesn't refresh your 18 memory about the activities that you in your 19 capacity as Belmac Corporation's head official 20 took around December 1994 and January of 1995. 21 Okay?</p> <p>22 MR. STEWART: You're asking him 23 whether Exhibit 12 is going to refresh his 24 memory with respect to that subject?</p> | <p>Page 99</p> <p>1 Q. So it has helped refresh your recollection?</p> <p>2 A. But this hasn't helped refresh it. If you had 3 asked that without this, I would have remembered 4 that.</p> <p>5 Q. What do you recall about that level of 6 discussion around 1994, 1995?</p> <p>7 A. I had asked to have a -- I felt there should be 8 a contractual relationship between our 9 companies, and engaged Cremides & Associates, 10 Javier Santos, to draft an agreement, and I 11 presented that negotiation, and I presented that 12 agreement -- I'm not sure if it was to DeBreges 13 or whomever, and we attempted for years to get 14 an agreement. And it never worked.</p> <p>15 Q. So an overarching agreement that defined the 16 relationship between Ethypharm and Laboratorios 17 Belmac, correct?</p> <p>18 MR. STEWART: Objection.</p> <p>19 A. It was to define how they were going to be in 20 the Zaragoza facility.</p> <p>21 Q. And let's look at the next paragraph. "Belmac 22 wishes to" --</p> <p>23 MR. STEWART: That's the fourth?</p> <p>24 MR. BOSTWICK: Yes, that's the fourth.</p> |

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| <p style="text-align: right;">Page 102</p> <p>1 Q. "Belmac wishes to establish" -- and, again, 2 that's Belmac Corporation, U.S.A., correct, 3 "wishes to establish a joint relationship with 4 Ethypharm, including but not limited to," and 5 one you mentioned, "erythromycin;" and 6 omeprazole is listed at the end of the sentence. 7 Do you see that?</p> <p>8 A. I see that.</p> <p>9 Q. Does that refresh your memory about what was 10 discussed in 1995 -- early 1995 or late 1994?</p> <p>11 A. No.</p> <p>12 Q. Do you think that's incorrect?</p> <p>13 A. As I compare this to this --</p> <p>14 Q. To the press release, in other words --</p> <p>15 A. -- I'd say this is incorrect, and I don't know 16 where this document came from, who authored it.</p> <p>17 Q. In other words, as you compare -- just for the 18 record, as you compare Exhibit 11 to 19 Exhibit 12 --</p> <p>20 A. Yes.</p> <p>21 Q. -- you question Exhibit 12; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Let's look at the fifth paragraph in the middle. 24 It says, "It is the intent of both companies" --</p> | <p style="text-align: right;">Page 104</p> <p>1 products above, omeprazole, spironolactone, 2 erythromycin cannot be delivered transdermally. 3 Why that would be in here, I don't know. I'm 4 questioning this document.</p> <p>5 Q. Do you agree that your contacts in December of 6 1994 and January of 1995 concerned the 7 omeprazole -- in part, the omeprazole business 8 between Ethypharm and Belmac -- Laboratorios 9 Belmac?</p> <p>10 A. Please repeat that.</p> <p>11 (Reporter read back the last question.)</p> <p>12 A. In part, yes.</p> <p>13 Q. And in looking at what is exhibit -- let's put 14 the document that you have questions about to 15 the side for a minute, and I'll ask you about 16 the Exhibit 11, which is the January 19th, 1995 17 letter, and the December 4th letter, Exhibit 18 Number 9. Let's just take a look at those.</p> <p>19 A. Exhibit 9 and?</p> <p>20 Q. Right.</p> <p>21 A. 9 and? Which one was it?</p> <p>22 Q. 9 and 11. Now, both of those are from you, 23 correct?</p> <p>24 A. Yes.</p> |
| <p style="text-align: right;">Page 103</p> <p>1 do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. -- "to develop the transdermal products for the 4 Spanish market as well as" -- "and to perform at 5 least a portion of the research and development 6 within the Belmac Ethypharm's facilities in 7 Zaragoza." Is that correct?</p> <p>8 MR. STEWART: Are you asking him 9 whether it's correct that your reading of that 10 is correct or whether that was the intent of 11 both companies at the time?</p> <p>12 MR. BOSTWICK: That's a fair 13 objection.</p> <p>14 Q. I'm asking you the latter. I'm asking whether 15 you recall that when you went over as -- to 16 discuss these matters with Ethypharm in December 17 of 1994 or January of 1995, whether this was a 18 subject matter of those discussions.</p> <p>19 A. I don't recall whether it was a subject at that 20 time. This further -- I question this further 21 because to develop transdermal products for the 22 Spanish market, okay, and if you look up at the 23 products that are referenced, again, I'm 24 questioning this document because looking at the</p> | <p style="text-align: right;">Page 105</p> <p>1 Q. And both of those indicate right on the 2 letterhead and in the front line that you're 3 writing on behalf of the U.S. headquarters, 4 correct?</p> <p>5 A. No.</p> <p>6 Q. Okay. Why do you say no?</p> <p>7 A. I wouldn't be writing on behalf of Belmac if I 8 was talking about a relationship in 9 manufacturing. So it would be on behalf of 10 Laboratorios Belmac, and there may be some 11 interest here for Bentley or Belmac Corporation.</p> <p>12 Q. And, in fact -- well, strike that. Wouldn't it 13 be reasonable for Ethypharm upon receiving these 14 two documents, Exhibits 9 and 11, to believe 15 that headquarters in the U.S. authorized you to 16 take these steps?</p> <p>17 MR. STEWART: Objection as to his -- 18 as to the competency of this witness to surmise 19 or testify as to what someone else is going to 20 believe.</p> <p>21 A. I don't know how they take it.</p> <p>22 Q. I'm sorry. I think it's because you're --</p> <p>23 A. I don't know how they take it. I'd given them 24 two cards, two business cards.</p> |

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| <p style="text-align: right;">Page 106</p> <p>1 Q. All right. It's your testimony on those dates 2 you specifically recall giving two business 3 cards to Mr. -- 4 A. No, no. At some occasion, probably in the 5 introductory meeting, I would have. 6 Q. But you don't have a specific recollection as 7 you sit here today of actually giving two 8 business cards to anybody at Ethypharm; do you? 9 A. Yes. 10 Q. You do have a specific -- 11 A. I have given -- I know that I've given business 12 cards. I don't know what specific date and 13 where it was, but I know I have, yes. 14 Q. Okay. And who did you -- I'm going to track 15 into your specific memory now that you have that 16 you've said. Tell me who you recall giving both 17 business cards to. 18 A. I can't recall the exact date or who it was, but 19 it's my routine, normal way. 20 Q. So you don't have a specific memory. You have a 21 general belief that that's what you did; is that 22 correct? 23 MR. STEWART: Objection. 24 A. I do not have a specific date nor place nor</p> | <p style="text-align: right;">Page 108</p> <p>1 handwriting: I don't know whose that is. I do 2 not recognize this. 3 Q. So this handwriting in English here is not your 4 handwriting? 5 A. No. 6 Q. It does include your name in the first paragraph 7 there. Do you recall taking the negotiations 8 with Mr. DeBreges relating to the transfer of 9 know-how regarding various products and the 10 manufacturing of various products, including 11 omeprazole, to this level around March of 1995? 12 A. No, I do not. My recollection was that the 13 negotiations and discussions were between our 14 general manager and the general manager in 15 Spain. I do not remember getting into the 16 details of such an agreement. 17 Q. You don't think this would be Clemente Gonzalez 18 who would write this to you? 19 A. He doesn't speak English. This is written in 20 English. 21 Q. All right. So I take it you just can't help me 22 in terms of whose handwriting that is on this 23 document, correct? 24 A. No. I know my own handwriting, and that is not</p> |
| <p style="text-align: right;">Page 107</p> <p>1 person in mind. 2 Q. Okay. Let me show you another document. 3 (Draft of Manufacturing Agreement was 4 marked Exhibit Number 13 for 5 identification.) 6 THE WITNESS: Before we do that, can I 7 run to the bathroom? 8 MR. BOSTWICK: Certainly. 9 THE VIDEOGRAPHER: The time is 10 11:54 a.m. We're going off the record. 11 (Recess) 12 THE VIDEOGRAPHER: The time is 13 12:03 p.m. We're back on the record. 14 Q. Okay. Mr. Murphy, I had said I would hand you 15 another exhibit. I'm sure you're happy to hear 16 that, but there it is. And I'll ask you if you 17 recognize that document. 18 A. I do not recognize the document. 19 Q. This document appears to be a draft of a 20 manufacturing agreement, dated March 21st, 1995. 21 Is that something that we can -- at least from 22 appearances we can agree on that? 23 A. It appears to be a draft that says March 21st in 24 the text. I don't recognize it. That's not my</p> | <p style="text-align: right;">Page 109</p> <p>1 my handwriting, not to the best of my 2 recollection. 3 Q. Do you remember participating in reviewing 4 drafts of these manufacturing agreements 5 relating to Ethypharm around this time period, 6 March of 1995? 7 A. I do not remember participating in any specific 8 one. During this time period, I would have been 9 debriefed. 10 (March 28, 1995 Diary Entry were marked 11 Exhibit Number 14 for identification.) 12 Q. Exhibit 14 -- 13 MR. BOSTWICK: Did you give that to 14 Mr. Stewart? 15 MR. STEWART: Yes, got it. 16 Q. This is your handwriting, correct? 17 A. Yes. 18 Q. And this is a page from the diaries that you 19 have -- that your counsel has provided to us in 20 the context of this case; is that correct? 21 A. Yes. 22 Q. And when it says 3-28-95, that's an indication 23 of March 28th, 1995? 24 A. Yes.</p> |

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| <p style="text-align: right;">Page 110</p> <p>1 Q. All right. Does this -- do the statements there 2 "Ethypharm, Adolfo de Basilio, final draft 3 reviewed with both lawyers, tomorrow their 4 lawyers, sign Spanish contract," does that 5 refresh your memory that you were involved in 6 the negotiations of this type of manufacturing 7 agreement about this March 1995 time frame? 8 A. No, but it does refresh my memory exactly as I 9 said previously. Somebody has debriefed me, and 10 this is probably a telephone call, and they're 11 debriefing me they've met -- this is the best 12 recollection I can make out of this. With 13 regard to Ethypharm, somebody has met with 14 Adolfo Basilio, and a final draft has been 15 reviewed by both lawyers expected tomorrow, 16 which is consistent with somebody debriefing me. 17 Q. Okay. 18 A. And somebody is notifying me here that Mr. Leduc 19 was in China or will be in China for ten days. 20 Q. Okay. Let me go to the next document. 21 (Fax to Mr. De Basilio from Mr. Murphy, 22 dated April 4, 1995 was marked Exhibit 23 Number 15 for identification.) 24 Q. Do you believe you participated in the</p> | <p style="text-align: right;">Page 112</p> <p>1 Q. Do you recall providing input into the concept? 2 A. I don't recall receiving it, the memo of 3 understanding. So I don't know if I did provide 4 input. 5 Q. Let's take a look at the next document. 6 (April 18, 1995 Diary Entry was marked 7 Exhibit Number 16 for identification.) 8 Q. I'm showing you Exhibit 16, and I ask if that's 9 also your handwriting. 10 A. Yes. 11 Q. That's also from your diaries that have been 12 produced in this case? 13 A. Yes. 14 Q. And this is your notation from April 18th, 1995, 15 correct? 16 A. Yes. 17 Q. Could you read that to us? I'm not sure I can 18 read all that. 19 A. What do you want me to read, the whole thing? 20 Q. If you would. 21 A. "A fixed monthly amount of 3,774,000 pesetas 22 would be invoiced. Total amount" -- "total 23 annual amount of 42 million pesetas and will 24 correspond to Belmac's commitment to provide</p> |
| <p style="text-align: right;">Page 111</p> <p>1 negotiations specifically in the sense of 2 reviewing and commenting on the specifics of 3 manufacturing agreement around 1995? 4 A. I think had I commented on it, I believe it 5 would probably be written here, that I had my 6 comments or something notation. I think they 7 were just -- I'm not sure of this now, but from 8 what I'm reading here, somebody is debriefing me 9 as to what is happening. 10 Q. I show you Exhibit 15. I'll ask if you 11 recognize that document. 12 A. Yes. 13 Q. And this is a document that is signed by you as 14 the president and CEO of Belmac Corporation in 15 the U.S., which later became Bentley, correct? 16 A. Yes. 17 Q. And it's dated April 4th, 1995, correct? 18 A. Yes. 19 Q. And it's to Adolfo de Basilio at Ethypharm? 20 A. Yes. 21 Q. And you indicate that you'd like to see the memo 22 of understanding and provide input into the 23 concept. Do you see that in Paragraph 2? 24 A. Yes, yes.</p> | <p style="text-align: right;">Page 113</p> <p>1 capacity to manufacture," blank, "production 2 units per month. In the event Ethypharm" -- 3 Q. What's that little character there? 4 A. Paragraph. 5 Q. Okay. 6 A. "In the event Ethypharm is unable to provide 7 manufacturing orders for production, then the 8 minimum amount will become," blank, "pesetas per 9 month. If the lack of orders occur for three 10 months in any twelve-month period, then the 11 contract will become void, requiring 12 renegotiation." 13 Q. Is this your -- a notation from you about 14 something to include in the manufacturing 15 contract with Ethypharm? 16 A. I'm not sure where this came from, whether 17 somebody was essentially reading this to me in 18 debriefing. I don't really know where this came 19 from or really what this would be inserted into. 20 I don't recall. 21 Q. So that's not an expression of your idea of what 22 ought to be put into that manufacturing 23 agreement? 24 A. It may be. I don't know. I don't recall this</p> |